

Ex. A

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION: MIDDLESEX COUNTY

DOCKET NO. MID-L-5384-11 AS

AUDREY SAMPSON, :
individually and as Executrix :
of the Estate of JOHN SAMPSON :

Plaintiff, :

vs. :

3M COMPANY, f/k/a :
Minnesota Mining & :
Manufacturing Company, et al., :

Defendants. :

Washington, D.C.

Wednesday, August 2, 2017

Videotaped deposition of DANIEL STEINMETZ

10:02 A.M.

VOLUME III

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DEPOSITION OF DANIEL STEINMETZ

Held at
Kirkland & Ellis
655 - 15th Street, N.W.
Third Floor
Washington, D.C. 20005

Pursuant to notice, before Carol J.
Robinson, Registered Professional Reporter and Notary
Public in and for the District of Columbia.

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<p>1 EXHIBITS MARKED (continued)</p> <p>2 (Attached)</p> <p>3 Number Description PAGE</p> <p>4 Exhibit 36A-B Pair of rock samples taken 673</p> <p>5 from the Johnson mine of</p> <p>6 EMTAL 42 and EMTAL 500,</p> <p>7 submitted to McCrone from</p> <p>8 Engelhard in 1973</p> <p>9 Exhibit 37A-C Three talc rock samples 674</p> <p>10 obtained from Ed Lomas at</p> <p>11 Johnson mine in the late</p> <p>12 '70s and early '80s</p> <p>13 Exhibit 37D-F Three powder samples 674</p> <p>14 currently under the custody</p> <p>15 of Micky Gunter</p> <p>16 Exhibit 38 Talc rock sample obtained by 681</p> <p>17 Micky Gunter from Leslie</p> <p>18 White</p> <p>19 Exhibit 39 Talc rock sample reportedly 686</p> <p>20 taken from the Johnson mine</p> <p>21 obtained by Micky Gunter</p> <p>22 from University of Vermont</p>	<p>1 P-R-O-C-E-E-D-I-N-G-S</p> <p>2 THE VIDEOGRAPHER: We are now on the</p> <p>3 record. This begins DVD Number 1 in the deposition</p> <p>4 of Daniel Steinmetz in the matter of Audrey Sampson</p> <p>5 vs. 3M Company, et al., in the Superior Court of New</p> <p>6 Jersey, Middlesex County, Law Division, Docket Number</p> <p>7 MID-L-5384-11AS.</p> <p>8 Today is August 2, 2017, and the time is</p> <p>9 10:02 a.m.</p> <p>10 This deposition is being taken at</p> <p>11 655 15th Street Northwest, Washington, D.C., at the</p> <p>12 request of Cohen Placitella and Roth.</p> <p>13 The videographer is Ray Moore of Magna</p> <p>14 Legal Services, and the court reporter is Carol</p> <p>15 Robinson of Magna Legal Services.</p> <p>16 Counsel will be noted on the stenographic</p> <p>17 record. Will the court reporter please swear in the</p> <p>18 witness.</p> <p>19 DANIEL STEINMETZ</p> <p>20 called as a witness, having been first duly sworn to</p> <p>21 tell the truth, the whole truth, and nothing but the</p> <p>22 truth, was examined and testified as follows:</p>

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EXAMINATION

BY MR. PLACITELLA:

Q. Good morning, Mr. Steinmetz. How are you?

A. I'm fine, thank you.

Q. We are here hopefully to conclude your deposition today.

A. Yes.

Q. Do you have P-13? It should be under -- I had it on top before.

A. Yes.

MR. FARRELL: Which one is that, Chris?

BY MR. PLACITELLA:

Q. P-13 is the court order. Is that correct?

A. Yes.

Q. Mr. Steinmetz, as a representative of BASF on the issues identified in the court order, what is your understanding of your duties and obligations of preparing to testify on behalf of BASF?

MR. FARRELL: Objection to form.

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have been done over the last few years with regards to Engelhard, old Engelhard documents. I learned about the samples that we have and the chain of custody for those samples; and then, just in general, other information regarding all of the documents that are in the boxes in the back.

BY MR. PLACITELLA:

Q. Am I correct that all of the information concerning the source and selection of the documents that have been produced here today came from the lawyers of BASF?

MR. FARRELL: Objection to form, foundation.

THE WITNESS: By "came from," you mean the ones that I've looked at?

BY MR. PLACITELLA:

Q. Yes.

A. Yes.

Q. You did not do any independent searches on your own. Correct?

MR. FARRELL: Objection to form.

THE WITNESS: That's correct. I -- I

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THE WITNESS: My understanding is that I am the person most knowledgeable representing BASF regarding the issues outlined in that order.

BY MR. PLACITELLA:

Q. My question is: What is your understanding of what your obligations are in order to prepare to give the testimony pursuant to the Court's order?

MR. FARRELL: Objection to form.

THE WITNESS: My understanding is I should be prepared to answer questions that you have regarding those issues.

BY MR. PLACITELLA:

Q. And what specific preparation did you undertake in order to respond fully to the Court's order?

MR. FARRELL: Objection to form.

THE WITNESS: Well, before the first set of depositions, I met with counsel for a couple of days, spent several hours reading prior testimony from other depositions of other people, learning about the methods of searching for information that

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watched searches done as examples, so I knew how they were done, but I didn't do them myself.

BY MR. PLACITELLA:

Q. But the selection of documents was done exclusively by BASF's counsel or people working for them. Correct?

A. Yes.

MR. FARRELL: Objection to form.

BY MR. PLACITELLA:

Q. And any information that you're providing concerning the source of the documents that have been selected came directly from BASF's lawyers. Correct?

MR. FARRELL: Objection to form.

THE WITNESS: Yes. The information came from them, but a lot of it I -- I looked at on my own and independently I made sure I was comfortable with.

BY MR. PLACITELLA:

Q. Did you ask whether the Cahill lawyers had any information on the existence, fate, or last known whereabouts of any of the documents that had been asked to be produced in this deposition?

A. I'm sorry. Could you repeat that?

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1 Q. Sure. Did you ask whether the Cahill
2 Gordon lawyers had any information on the source of
3 the information that's been produced for this
4 deposition?

5 MR. FARRELL: Objection to form.

6 THE WITNESS: I'm not sure if I asked
7 that specifically, but we did discuss Cahill Gordon
8 and the source of a lot of the documents that are in
9 the back, having come from Cahill Gordon.

10 BY MR. PLACITELLA:

11 Q. Did you ask whether there were any
12 current or former Engelhard employees or BASF
13 employees who have any information on the existence,
14 fate, or last known whereabouts of any of the
15 documents you've been asked about in this deposition?

16 A. I'm not sure if I asked specifically, but
17 we did discuss the fact that several former employees
18 were spoken to regarding this case.

19 Q. But you never did that yourself?

20 A. No, I did not.

21 Q. Were you provided access to those people?

22 MR. FARRELL: Objection to form.

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1 THE WITNESS: If I had wanted it, I
2 probably could have had access to those that are
3 still available.

4 BY MR. PLACITELLA:

5 Q. Okay. Now, the last time we were here,
6 we talked about -- and I just want to clarify -- the
7 physical -- the Box No. Exhibit 5, which is the box
8 of physical testing documents.

9 A. Yes.

10 Q. And in that box, we identified a single
11 document relating to the testing of EMTAL talc for
12 asbestos. Do you recall that?

13 MR. FARRELL: Objection to form.

14 THE WITNESS: I do.

15 BY MR. PLACITELLA:

16 Q. Since that time, have you identified any
17 other documents in Exhibit 5 relating to the testing
18 of EMTAL talc for asbestos?

19 A. Yes. I think at the -- at the last
20 deposition I mentioned there were more than just that
21 one, that there were at least a couple of others.
22 And we -- I have identified those. There are two

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1 additional ones.

2 Q. So, do you have all -- all of them with
3 you?

4 A. Yes, I do.

5 BY MR. PLACITELLA:

6 Q. Okay, thank you.

7 Can -- can I -- do you have copies of
8 them?

9 A. Yes.

10 MR. FARRELL: We do have a copy.

11 What orders do you have yours in, Dan?

12 THE WITNESS: The first exhibit I have is
13 Exhibit P-17, which is the one we talked about last
14 time.

15 MR. FARRELL: Here you go,
16 Mr. Placitella.

17 MR. PLACITELLA: So, why don't we mark
18 them --

19 MR. FARRELL: I'm sorry, Chris. Did I
20 give you three -- I don't know if I gave you two
21 copies of one or I gave you all three.

22 MR. PLACITELLA: They look to be

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1 different.

2 MR. FARRELL: Okay.

3 THE WITNESS: The first one is -- was
4 P-17 from the last deposition.

5 MR. PLACITELLA: Okay. So, let's just
6 mark the next two, and then I'll look at them over a
7 break so we don't waste a lot of time.

8 What's the next exhibit number do you
9 have?

10 THE REPORTER: 32.

11 MR. PLACITELLA: So, can we mark the next
12 two exhibits 32 and 33?

13 MR. FARRELL: Just so the record is
14 clear, you will see there are paper clips on there.
15 These are collections of documents, not individual
16 documents.

17 MR. PLACITELLA: Okay.

18 MR. FARRELL: One came from -- for each
19 of those packets, it's the document from the box and
20 then one or two other documents that Mr. Steinmetz
21 took note of.
22

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(Plaintiff's Exhibit No. 32, physical testing laboratory use form dated August 14, 1972, was marked for identification.)
(Plaintiff's Exhibit No. 33, analytical laboratory use form dated June 7, 1971, was marked for identification.)

MR. FARRELL: Also your -- just so you know, Mr. Placitella, your call on how you want to mark these. The one document that was P-17, Mr. Steinmetz now has a packet with that one document. So, I don't know if you want to mark this as --

MR. PLACITELLA: Why don't we just mark it --

MR. FARRELL: -- with whatever you are up to.

MR. PLACITELLA: Why don't we just mark it 34.

MR. FARRELL: Sure.

MR. PLACITELLA: That makes more sense.

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MR. FARRELL: So, so the record is clear, the first page of what is going to be 34 should be the same as P-17. It just has -- 34 has some additional documents paper-clipped to it.

(Plaintiff's Exhibit No. 34, physical testing laboratory use form dated April 2, 1973, was marked for identification.)

BY MR. PLACITELLA:

Q. You have in front of you Exhibits 32, 33, and 34. Correct?

A. Yes.

Q. Can you just describe them generally for the record.

A. Exhibit P-32 is a physical testing laboratory use form dated August 14, 1972.

Exhibit P-33 is also an analytical laboratory use form dated June 7, 1971.

And then P-34 is another physical testing laboratory use form dated April 2, 1973.

Q. And all of the pages of the documents of P-32, 33, and 34 came from the box P-5?

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MR. FARRELL: Objection to form.

THE WITNESS: Only the first page of each.

BY MR. PLACITELLA:

Q. Okay. So, the first page of 32, 33, and 34 came from P-5?

A. That's correct.

Q. Okay. And they were the original documents you received from where? What source?

A. These documents were recovered from a box at Iron Mountain. So, they were originally acquired by BASF when Engelhard was acquired in 2006.

Q. And the other documents you have attached to 32, 33, and 34, where are they from?

A. In Exhibit 32, there is an attached TSR from Dankwerth to Hemstock dated August 1, 1972. And this was one of the Hemstock exhibits from the 1983 Hemstock deposition.

And then also attached to P-32 is page 14 from Laboratory Notebook No. 2333.

Q. Okay.

A. And P-33, again, that's the laboratory

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use form dated 6-7-71, and attached to that is a customer report dated July 8, 1971, which was part of the compilation put together by Cahill in 1982, and that was Tab 1 of that compilation.

And then also attached to P-32 is page 19 from Notebook No. 2139.

Q. Okay.

A. And P-34, again, that's the laboratory testing use form from April 2, 1973, and attached to that is a TSR from Schafer to Triglia dated February 28, 1973. This was also one of the Hemstock exhibits.

And then page 14 from Notebook 3057, page 17 from Notebook 3104, and page 47 from Notebook 3014. And those are all the original notebooks that we found at Iron Mountain.

Q. So, I'll take a look at that over a break, over lunch, and see if I have any other questions rather than take the time now.

Remember, last time we talked a little bit about Mr. Oulton's files. Do you recall that?

A. Yes.

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1 Q. Okay. Do you know whether Mr. Oulton's
2 files concerning the testing of EMTAL talc were in
3 existence and in possession, in custody and control
4 of Engelhard during the Westfall case?

5 MR. FARRELL: Objection to form. Vague
6 as to which documents.

7 THE WITNESS: Well, as I mentioned, I
8 think, previously, we don't know what happened to
9 Oulton's files because he retired in 1977. They have
10 been broken up, he may have cleaned them out, he may
11 have thrown some things away. We just don't know.

12 What we do know is that we have a lot of
13 documents on which Oulton is either a recipient, a
14 copied recipient, or an author. And those would have
15 been available during the Westfall case.

16 BY MR. PLACITELLA:

17 Q. But in terms of Oulton's file, that was
18 identified last time we were here. Do you know
19 whether that was available to Engelhard during the
20 Westfall case?

21 MR. FARRELL: Objection to form and
22 foundation.

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1 THE WITNESS: Yes. I believe you are
2 referring to the file TDO. And as I mentioned
3 before, we really don't even know what was in there,
4 who put it together, whether there was one sheet of
5 paper in there or whether there were a hundred sheets
6 of paper, and we don't even know if that file was in
7 existence in 1983.

8 Again, we do know that we have a lot of
9 information from Oulton. We just don't know if it
10 came from that -- a specific file called TDO file.

11 BY MR. PLACITELLA:

12 Q. So, the answer to my question is: Do you
13 know whether the TDO file was in possession of
14 Engelhard during the Westfall case, the answer is you
15 don't know?

16 MR. FARRELL: Objection to form,
17 foundation, misstates his testimony.

18 THE WITNESS: As I mentioned, we don't
19 know whether that file was available. We don't know
20 whether it existed at the time, but we do know that
21 we have a lot of the information from Oulton.
22

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1 BY MR. PLACITELLA:

2 Q. What is the TDO file, to your knowledge?

3 MR. FARRELL: Objection to form.

4 THE WITNESS: The only reference I've
5 seen to the TDO file is a reference on one of the
6 exhibits that we've spoken about previously. And in
7 handwriting, it says, I believe, "Look at the TDO
8 file." That's all I know about it.

9 BY MR. PLACITELLA:

10 Q. So, you don't know what it is.

11 A. That's correct.

12 Q. And you don't know what was in it.

13 MR. FARRELL: Objection to form.

14 THE WITNESS: That's correct.

15 BY MR. PLACITELLA:

16 Q. Do you know whether the TDO file was in
17 existence when the March 7, 1984, memo from Hemstock
18 was sent?

19 MR. FARRELL: Objection to form,
20 foundation, vague.

21 THE WITNESS: No. I guess it would be --
22 my answer would be the same as it was before. We

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1 don't know whether -- first, we don't know what was
2 in the file, we don't know how it existed, but we do
3 know that we have all kinds of documents with
4 Oulton's name on them.

5 Q. Do you have any testimony that the source
6 of information concerning the documents that have
7 been produced came from BASF's lawyers, what -- did
8 you ask since the last meeting, the last deposition,
9 whether BASF's lawyers have any idea what happened to
10 the Oulton file?

11 MR. FARRELL: Objection to form,
12 foundation.

13 THE WITNESS: I didn't ask that
14 specifically.

15 BY MR. PLACITELLA:

16 Q. Do you think, in terms of your obligation
17 to respond to the Court's order, that would have been
18 a good idea?

19 MR. FARRELL: Objection to form,
20 foundation, argumentative.

21 THE WITNESS: No. I think I prepared
22 well for this. I -- I don't think that would have

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1 made a difference.

2 BY MR. PLACITELLA:

3 Q. If the lawyers had that information,
4 don't you think it would be helpful to you?

5 MR. FARRELL: Objection to form,
6 foundation.

7 THE WITNESS: It would only be helpful
8 insofar as I could have answered your last question.
9 But as I've mentioned many times, we have so much
10 information from Oulton, I don't think it matters
11 what file it came from. We just know that we have
12 it.

13 BY MR. PLACITELLA:

14 Q. That's your opinion. Right, sir?

15 MR. FARRELL: Objection, argumentative.

16 THE WITNESS: That's based on what I've
17 known and learned from preparing.

18 BY MR. PLACITELLA:

19 Q. Do you know whether Cahill Gordon was
20 asked if they have a copy of the Oulton file?

21 A. I don't know if they were asked
22 specifically. I do know that every file that Cahill

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1 had was individually searched.

2 Q. For the Oulton file?

3 A. For anything related to EMTAL talc.

4 Q. Now, I don't know which number it is,
5 your folder addressing the documents used at the
6 Westfall deposition of Triglia. It is 20 or 21. Do
7 you know which one?

8 A. I have 20.

9 Q. 20. Okay.

10 The source of this is what?

11 MR. FARRELL: Objection to form, vague.

12 BY MR. PLACITELLA:

13 Q. The source of this exhibit is what?

14 A. The source of --

15 MR. FARRELL: Same objection.

16 THE WITNESS: The source of this exhibit
17 was counsel who put together this information for my
18 use.

19 BY MR. PLACITELLA:

20 Q. Okay. I'm looking -- I put it here under
21 the Elmo. This is the -- you have in front of you
22 the transcript of Mr. Triglia?

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1 A. Yes.

2 Q. The same thing?

3 A. Yes.

4 Q. All right. Is that complete, to your
5 knowledge?

6 MR. FARRELL: Objection to form.

7 THE WITNESS: This may have been the one
8 where there may be one page that is missing. I'm not
9 sure. I'd have to look at each page. But other than
10 that, yes. Page 37 wasn't in here, but otherwise
11 it's complete, yes.

12 BY MR. PLACITELLA:

13 Q. In terms of assessing what went on at the
14 Triglia deposition, do you think it would be
15 important to have all of the pages of the transcript
16 available to you?

17 MR. FARRELL: Objection to form,
18 foundation, calls for speculation.

19 THE WITNESS: Again, I have no reason
20 to -- I think this may have been a mistake. Maybe it
21 was misnumbered, but if we had page 37, we might have
22 a little bit more information. But I think, even if

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1 one page were missing, having all but one page of 117
2 gives me a good idea of the general direction of that
3 deposition.

4 BY MR. PLACITELLA:

5 Q. How many missing pages would start to
6 create concern for you?

7 MR. FARRELL: Objection to form, calls
8 for speculation.

9 THE WITNESS: I have no idea. That's
10 hypothetical.

11 BY MR. PLACITELLA:

12 Q. Two, three, four, five, six, seven?

13 MR. FARRELL: Same objection.

14 THE WITNESS: I don't know.

15 BY MR. PLACITELLA:

16 Q. Okay. Can you go to page 15 -- 14,
17 rather, of the transcript?

18 A. Okay.

19 Q. That's -- I have a Bates number 33355.
20 Is that correct?

21 A. Yes.

22 Q. The last question on that says, "After

1 you concluded that talc probably wouldn't be --
2 wouldn't profitably be used for cosmetic purposes,
3 what purposes did the company decide it would try to
4 sell the talc for?"

5 Do you see that?

6 A. Yes.

7 Q. And before that, on page 13, do you see
8 generally they talk about the testing of talc?

9 A. If I can take a couple of minutes just to
10 read through it.

11 Q. Yes.

12 (Witness reading through the document.)

13 A. Okay, I read that. Yes.

14 Q. It talks generally, on page 13 and into
15 14, about the testing of EMTAL talc. Correct?

16 MR. FARRELL: Objection to form.

17 THE WITNESS: Yes. It discusses some of
18 the methodologies that they had available to them.

19 BY MR. PLACITELLA:

20 Q. Can you tell me -- and then we talked
21 about the bottom of 14, where it talks about the talc
22 not being good for cosmetic purposes. Do you see

1 that?

2 A. Yes.

3 Q. Can you tell me what's -- what
4 information is disclosed on page 15 of the
5 deposition?

6 A. Okay. Page 15 is not in here, and I
7 don't know if that's because the copy you have or --

8 Q. This is the copy you gave me.

9 A. Yes.

10 Q. Okay. Can you tell me what's disclosed
11 about the testing of EMTAL talc on page 16 of the
12 deposition?

13 A. No. Pages 15 through 20 are not in this
14 copy.

15 Q. Can you tell me what's disclosed on
16 the -- page 17 of the deposition?

17 MR. FARRELL: Objection.

18 THE WITNESS: No.

19 BY MR. PLACITELLA:

20 Q. Do you have any concerns that you might
21 be missing some information?

22 MR. FARRELL: Objection, argumentative.

1 THE WITNESS: As I mentioned before --
2 no, I'm not. Like I said, I think I've read the
3 totality of this, and I'm comfortable with what he
4 testified.

5 BY MR. PLACITELLA:

6 Q. Can you tell me what was testified to
7 about on page 19 of the deposition?

8 MR. FARRELL: Objection. Harassing the
9 witness.

10 THE WITNESS: No. As I mentioned, pages
11 15 through 20 are not in here.

12 BY MR. PLACITELLA:

13 Q. And you didn't know that before today in
14 preparation for your deposition?

15 MR. FARRELL: Objection to form,
16 foundation.

17 THE WITNESS: I didn't notice that
18 before.

19 BY MR. PLACITELLA:

20 Q. Now, let's go to page 36.

21 Do you see page 36, line 7, when it talks
22 about the TSR by the research department, do you see

1 that?

2 A. Yes.

3 Q. And it says, "We -- well, we ran all the
4 tests that we were asked to run, comparative x-ray,
5 diffraction, examination of comparative x-ray,
6 fluorescence analysis, mineralogic microscopic exams,
7 and applicable techniques, including thin-section
8 study and the preparation of photographic evidence to
9 substantiate any mineralogical observations with
10 respect to texture, minerals present, et cetera."

11 Do you see that?

12 A. Yes.

13 Q. Then it goes on to say, "That's what we
14 did. We had a geologist in our employ at the time,
15 Karen Newger, who was a very good microscopist. She
16 did the microscopic work.

17 We also sent some of the samples to
18 another mineralogist, Dr. Farwell. He was up in
19 Connecticut. And their results, you know, agreed
20 more or less, you know, in the general categories.
21 Their report on actinolite kind of flip-flopped. One
22 said trace and one said there was slight trace.

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1 There was never any significant amounts found, just
2 traces of that particle, that mineral."

3 Do you see that.

4 A. Yes.

5 Q. What was the rest of his answer?

6 MR. FARRELL: Objection to form,
7 foundation.

8 THE WITNESS: I don't know if there was
9 any rest of it. It sounds like he's completing the
10 thought that -- at this point. There is no page 37,
11 as I mentioned earlier.

12 BY MR. PLACITELLA:

13 Q. Well, they're talking about the testing
14 of talc and the documentation of the testing. What
15 was on page 37?

16 MR. FARRELL: Objection to form.

17 THE WITNESS: I'm not sure there was
18 anything on 37. Like I said, that wasn't in this
19 copy. But he finishing the thought by saying there
20 were never any significant amounts found, answering
21 as to that question.
22

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1 BY MR. PLACITELLA:

2 Q. Do you see where it is underlined,
3 "photographic evidence"?

4 A. Yes.

5 Q. Who underlined that?

6 A. I don't know.

7 Q. Where is that photographic evidence?

8 MR. FARRELL: Objection to form and
9 foundation.

10 THE WITNESS: I don't know.

11 BY MR. PLACITELLA:

12 Q. Do you see where it says that work was
13 done by Karen Newger? Do you see that?

14 A. Yes.

15 Q. Do you have the results of her test?

16 MR. FARRELL: Objection to form and
17 foundation.

18 THE WITNESS: We have a lot of
19 information that was related to Karen Newger. I
20 suspect, if I went through all of the -- all the
21 documents in P-15, I could find work that she had
22 done and probably relate it back to this.

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1 Likewise with that photographic evidence,
2 it is probably related to a lot of the other
3 documents that we have in P-15.

4 BY MR. PLACITELLA:

5 Q. Oh, so, you have the photographic
6 evidence in P-15?

7 A. I didn't say we have the photographic
8 evidence. I said we could probably relate this back
9 to the -- to the documents that are in here where
10 they discuss the photographic evidence.

11 Q. Somebody thought it was important enough
12 that they underlined it in the transcript. Correct?

13 MR. FARRELL: Objection to form,
14 foundation, calls for speculation.

15 THE WITNESS: I don't know why anybody
16 underlined it. I don't know even who underlined it.

17 BY MR. PLACITELLA:

18 Q. Well, it certainly wasn't you. Correct?

19 A. Correct.

20 Q. That's how it was given to you.

21 A. That's how this booklet was, yes.

22 Q. And it talks about microscopic work that

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1 was done by Dr. Farwell in Connecticut and finding
2 actinolite. Do you see that?

3 A. Yes.

4 Q. Do you have Dr. Farwell's results?

5 MR. FARRELL: Objection to form and
6 foundation.

7 THE WITNESS: No. We discussed this, I
8 think, last time. This was mentioned in some of the
9 exhibits, and we haven't found that.

10 BY MR. PLACITELLA:

11 Q. So, you don't know what he found
12 specifically?

13 MR. FARRELL: Objection to form,
14 foundation.

15 THE WITNESS: I don't know what he found
16 specifically.

17 BY MR. PLACITELLA:

18 Q. And if what he found specifically was on
19 page 37, we will never know that?

20 MR. FARRELL: Objection to form,
21 foundation, calls for speculation.

22 THE WITNESS: As I mentioned, it sounds

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<p>1 to me, just reading this, it looks like he finished 2 his thought and answer by saying there was never any 3 significant amount found. 4 And so, I guess Dr. Farwell didn't find 5 any, since that was his general conclusion at the end 6 of his answer. 7 BY MR. PLACITELLA: 8 Q. Actually, it doesn't say that. It says, 9 "never any significant amounts found." We don't know 10 how much was found because we don't have his test 11 results. Right? 12 MR. FARRELL: Objection to form, 13 foundation, assumes facts. 14 THE WITNESS: I'm not sure that his 15 results exist anywhere anymore, though. 16 BY MR. PLACITELLA: 17 Q. But they certainly must have existed when 18 this deposition was taken. 19 A. I don't know if they existed when it was 20 taken. He knew about them at this time, but I don't 21 know if they actually existed at that point. 22 Q. Is he still alive?</p>	<p>1 foundation, assumes facts, misstates the record. 2 THE WITNESS: We haven't found it. We 3 don't have it. It may be missing. It may not have 4 existed in 1983 when this deposition was taken. We 5 don't know. 6 BY MR. PLACITELLA: 7 Q. Well, certainly, the lawyers at Cahill 8 Gordon would know. Right? They were at the 9 deposition. 10 MR. FARRELL: Objection to form and 11 foundation. 12 THE WITNESS: I don't know what they 13 knew. 14 BY MR. PLACITELLA: 15 Q. Did anybody ask them? 16 MR. FARRELL: Same objections. 17 THE WITNESS: I didn't. 18 BY MR. PLACITELLA: 19 Q. Why not? 20 A. Because I don't think it's significant. 21 Q. The fact that somebody found actinolite 22 in the EMTAL talc is not significant to you?</p>
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<p>1 A. I don't know. 2 MR. FARRELL: Objection to form. 3 BY MR. PLACITELLA: 4 Q. Did anybody try to call him and find out 5 whether he had any of this information? 6 MR. FARRELL: Objection to form and 7 foundation. 8 THE WITNESS: I don't know. I didn't. 9 Counsel may have. I don't know. 10 BY MR. PLACITELLA: 11 Q. When you read his deposition, did you ask 12 questions about what happened to the test results 13 done by Dr. Farwell, preparing for today's 14 deposition? 15 MR. FARRELL: Objection to form. 16 THE WITNESS: We discussed those as part 17 of the general discussion of some of the exhibits, 18 but I didn't ask that specifically. 19 BY MR. PLACITELLA: 20 Q. As we sit here today, whatever 21 Dr. Farwell found in his report is missing. 22 MR. FARRELL: Objection to form,</p>	<p>1 MR. FARRELL: Objection to form, 2 foundation, assumes facts, misstates the record. 3 THE WITNESS: No, I don't think it's 4 significant based in the -- in the context of this 5 statement because, as we saw in the answer here, he 6 concluded that there was never any significant amount 7 found. 8 BY MR. PLACITELLA: 9 Q. But we don't know what "significant" 10 means, do we, without actually seeing the report? 11 MR. FARRELL: Objection to form and 12 foundation. 13 THE WITNESS: Significant, to me, means 14 significant whether it's in the report or not. 15 BY MR. PLACITELLA: 16 Q. How much asbestos is significant in EMTAL 17 talc from your perspective? 18 MR. FARRELL: Objection to form, 19 foundation, assumes facts, misstates the record. 20 THE WITNESS: I'm -- I'm not an expert. 21 I can only rely on what other people thought at the 22 time or what people -- what experts think now. I</p>

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1 don't know what "significant" is because I'm not an
2 expert in that.

3 BY MR. PLACITELLA:

4 Q. Okay. So -- and the first time you found
5 out that there are now at least seven pages missing
6 from his transcript as we sit here today; correct?

7 MR. FARRELL: Objection to form.

8 THE WITNESS: I'm not sure there are
9 seven pages. I didn't use this for preparation. I
10 used ones that were at home. There may be other
11 copies that have those in there. I just don't know.
12 I'd have to look at the original copies.

13 BY MR. PLACITELLA:

14 Q. Wait a second. You produced here
15 documents, and you have other documents that are
16 complete that I was not given?

17 MR. FARRELL: Objection to form.

18 THE WITNESS: I have one at home. You
19 asked me in the last deposition if I had any
20 preparation material at home, and I said I do have a
21 document like this at home that I left in Detroit.

22 MR. PLACITELLA: Is there another

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1 document that has these pages, Mr. Farrell, that I
2 was not provided?

3 MR. FARRELL: You've been provided the
4 copies of the Triglia transcript that we have.

5 MR. PLACITELLA: Okay. So, there is no
6 other document with the missing pages?

7 MR. FARRELL: I don't know if there is
8 another version of the Triglia transcript.

9 MR. PLACITELLA: Okay.

10 MR. FARRELL: If we have another version
11 of it, I'm sure it's been produced to you.

12 MR. PLACITELLA: I found another version
13 that didn't even have page numbers on it. At least
14 this one has page numbers.

15 MR. FARRELL: So, apparently, there is
16 more than one version of this transcript.

17 MR. PLACITELLA: And it doesn't have
18 these pages.

19 MR. FARRELL: Well, no. I haven't -- I
20 would look into it if -- you can check the document
21 production, Mr. Placitella. It has been produced to
22 you.

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1 MR. PLACITELLA: No, that's fine, what
2 we're doing.

3 BY MR. PLACITELLA:

4 Q. Can we go to page 67, please?

5 MR. FARRELL: What page is that?

6 MR. PLACITELLA: Page 67.

7 BY MR. PLACITELLA:

8 Q. Do you see where it says, on line 8:

9 "Is that the same list of samples that's
10 included in Exhibits 15 and 17 of this deposition?"

11 "ANSWER: I think they are different.

12 They are not the same. These were all" --

13 Do you see that?

14 A. Yes.

15 Q. Do you see where somebody whited out and
16 typed something else in, the mine samples? Do you
17 see that? I circled it on mine.

18 MR. FARRELL: Objection to form and
19 foundation.

20 THE WITNESS: I have no idea.

21 BY MR. PLACITELLA:

22 Q. Well, who whited it -- who whited it out

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1 and typed something else in?

2 MR. FARRELL: Objection to form and
3 foundation.

4 THE WITNESS: I don't know.

5 BY MR. PLACITELLA:

6 Q. Well, would that be significant, for
7 example, if there was another word there other than
8 "mine"?

9 A. I can't think of many words that would
10 fit in there other than the word "the."

11 Q. How about "the production samples, the
12 air samples"? Who whited it out and put "mine
13 samples"?

14 A. I don't think --

15 MR. FARRELL: Objection -- one moment
16 please.

17 Objection to form, foundation, calls for
18 speculation.

19 Go ahead, Mr. Steinmetz.

20 THE WITNESS: I don't know. I don't
21 think "production" or a longer word would fit in
22 there.

1 BY MR. PLACITELLA:

2 Q. How could you represent that this is an
3 accurate transcription of what happened back in 1984
4 of this deposition where we have white-outs and
5 things typed in, and you have no idea who did it and
6 when it was done?

7 MR. FARRELL: Objection to form,
8 foundation, argumentative.

9 THE WITNESS: I -- my feeling, looking at
10 this and reading it and preparing for this, I don't
11 think that is significant. It's...

12 BY MR. PLACITELLA:

13 Q. You don't think it's significant that
14 people were whitening out and typing other things in
15 the transcript and this is represented to be a true
16 and accurate copy of the original transcript? You
17 don't think that's significant?

18 MR. FARRELL: Objection to form and
19 foundation.

20 THE WITNESS: I'm not sure how it's
21 represented. All I know is that it doesn't change my
22 perception of -- of the value of it or the accuracy

1 of it. I have no problem with that.

2 BY MR. PLACITELLA:

3 Q. So, now we have missing pages and
4 whited-out sentences, and you still think that it is
5 absolutely representative of what transpired at the
6 date of this deposition in 1984. Correct?

7 MR. FARRELL: Objection to form,
8 foundation, argumentative.

9 THE WITNESS: I don't know what you mean
10 by "absolutely," but, yes, I do think that it's a
11 good representation of what was given at deposition.

12 BY MR. PLACITELLA:

13 Q. Okay. Now, am I correct that --

14 A. Keep in mind, this is, again, we're
15 talking 40 years ago. So --

16 Q. Yes, sir, but --

17 A. -- it's hard to say what happened 40
18 years ago.

19 Q. But BASF's lawyers were there at this
20 deposition. Correct?

21 MR. FARRELL: Objection to form,
22 misstates the record.

1 BY MR. PLACITELLA:

2 Q. Correct?

3 A. Well, Engelhard.

4 Q. Engelhard's lawyers. Correct?

5 MR. FARRELL: Objection to form,
6 foundation, misstates the record.

7 THE WITNESS: I'm sorry. Could you
8 repeat the question?

9 BY MR. PLACITELLA:

10 Q. Engelhard's lawyers were there at the
11 deposition. Correct?

12 MR. FARRELL: Same objection. Misstates
13 the record.

14 THE WITNESS: My understanding is that
15 there probably were Engelhard lawyers there. I know
16 Cahill was there. I'd have to look and -- but I
17 assume that they were.

18 BY MR. PLACITELLA:

19 Q. Do you see where, on the first page, it
20 says Cahill Gordon & Reindel were there?

21 A. Yes.

22 Q. And those lawyers eventually became

1 BASF's lawyers. Correct?

2 A. I'm sorry. I don't understand what you
3 mean by "they became."

4 Q. Well, after BASF bought out Engelhard,
5 Cahill continued to serve as their lawyers. Correct?

6 A. Yes, they did, for a while. I -- yes.

7 Q. Now, am I correct that, from your review
8 of all of the evidence in your prior deposition, that
9 one of the most important facts litigated in cases
10 involving EMTAL talc for asbestos was whether there
11 was actually asbestos in the EMTAL talc. Correct?

12 MR. FARRELL: Objection to form and
13 foundation, beyond the scope of the notice.

14 THE WITNESS: I'm sorry. Could you
15 repeat it?

16 BY MR. PLACITELLA:

17 Q. One of the most important facts in these
18 cases or issues that are debated is whether there
19 was, in, fact asbestos in the EMTAL talc sold by
20 Engelhard. Correct?

21 MR. FARRELL: Objection to form,
22 foundation, beyond the scope of the notice. Calls

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1 for speculation.

2 THE WITNESS: I'm not sure, from a legal
3 perspective, what the answer is. I know that the
4 issue surrounding EMTAL talc included the possible
5 presence of asbestos.

6 BY MR. PLACITELLA:

7 Q. And if there was no asbestos in the EMTAL
8 talc, then there was no case that the plaintiff could
9 prove. Correct?

10 MR. FARRELL: Objection to form,
11 foundation, beyond the scope of the notice.

12 THE WITNESS: I don't know.

13 BY MR. PLACITELLA:

14 Q. You know from looking at depositions that
15 representations were made by Engelhard and its
16 lawyers that there was no evidence of asbestos in
17 EMTAL talc. Correct?

18 MR. FARRELL: Objection to form,
19 foundation, beyond the scope of the notice.

20 THE WITNESS: There's been so much --
21 there have been so many depositions and so much
22 information and so many cases, I'd have to look at

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1 specific statements.

2 MR. PLACITELLA: Can you mark this as the
3 next exhibit?

4 (Plaintiff's Exhibit No. 35,
5 letter dated May 17, 1989 from
6 Ira J. Dembrow at Cahill Gordon &
7 Reindel to Jeffrey C. Schwartz,
8 Esq., Bates stamped BASF FC
9 0010055-57, was marked for
10 identification.)

11 MR. PLACITELLA: First let me give it to
12 counsel, because I only brought one copy.

13 MR. FARRELL: Which topic in your notice
14 does this relate to?

15 MR. PLACITELLA: I'll get to it in a
16 second.

17 MR. FARRELL: Which topic is it?

18 MR. PLACITELLA: I'll get to it in a
19 second.

20 MR. FARRELL: You can't tell me a topic
21 number?

22 BY MR. PLACITELLA:

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1 Q. Do you have that in front of you, sir?

2 MR. FARRELL: Mr. Placitella, can you
3 tell me the topic number?

4 MR. PLACITELLA: I am not answering your
5 questions. I'm not doing this today.

6 MR. FARRELL: We came back for a third
7 day so you could talk about talc samples --

8 MR. PLACITELLA: We're going to get
9 there.

10 MR. FARRELL: -- and now you are spending
11 the morning covering material you covered on the
12 first two days --

13 MR. PLACITELLA: I don't think so.

14 MR. FARRELL: -- and now you're covering
15 material that is beyond the scope of the notice.

16 MR. PLACITELLA: Let me know when you're
17 done, and I'll ask my next question.

18 MR. FARRELL: I'm just asking you to tell
19 me which topic you are covering.

20 MR. PLACITELLA: Let me know when you are
21 done, and I'll ask my next question.

22 MR. FARRELL: I'm finished. I'm waiting

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1 for your answer.

2 MR. PLACITELLA: Thank you very much.

3 BY MR. PLACITELLA:

4 Q. Do you have that in front of you, sir?

5 A. Yes.

6 Q. Have you had a chance to look at it?

7 A. I can look at it. I would say that I
8 haven't looked into any other types of litigation for
9 my preparation, so I'm not sure I will be able to
10 respond to this very -- well, I -- I can read it.

11 Q. Well, weren't you supposed to be prepared
12 for what was in the historical litigation files
13 related to EMTAL talc?

14 MR. FARRELL: Objection to form,
15 foundation, misstates the notice, beyond the scope of
16 the notice.

17 BY MR. PLACITELLA:

18 Q. Can you answer my question, sir?

19 A. I'm sorry. Could you repeat it?

20 MR. PLACITELLA: Can you read it back?

21 (The record was read by the court

22 reporter.)

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1 MR. FARRELL: Same objections.
2 THE WITNESS: I'm sorry. Can I look at
3 the original notice just to --
4 BY MR. PLACITELLA:
5 Q. It's right here. Do you see under
6 Number 13?
7 A. I'm sorry, I can't see it.
8 Q. I'll put it on and then I'll hand it to
9 you.
10 "The location, completeness of all
11 original files related to lawsuits filed against
12 Engelhard and BASF for injuries allegedly related to
13 EMTAL talc."
14 Do you see that?
15 A. I see it, not very well, but -- again,
16 I'm comfortable talking about location and
17 completeness of original files.
18 As I mentioned, I can't talk a lot about
19 individual specifics of -- of specific litigation
20 activities because I didn't prepare for that kind of
21 thing.
22 Q. Okay.

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1 A. So, I know where the files are and --
2 Q. Can I just have that document?
3 A. Yes.
4 Q. I just have one question about it.
5 Do you see, on Exhibit 35, the second
6 page, "The unequivocal conclusion reached by all of
7 these investigations" -- well, let me start up
8 further.
9 "Enclosed is an affidavit by William" --
10 MR. FARRELL: Do you have a copy that I
11 can read along with?
12 MR. PLACITELLA: It's up there. It's
13 pretty --
14 MR. FARRELL: Do you have a copy of the
15 document I can read along with?
16 MR. PLACITELLA: No, but you can see it
17 right up on the screen.
18 "Enclosed is an" --
19 MR. FARRELL: Mr. Placitella, do you have
20 a copy of the document for me?
21 MR. PLACITELLA: No, I don't. I'm sorry.
22 It says, "Enclosed" --

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1 MR. FARRELL: So, when the judge directed
2 you to have copies of the documents, you didn't bring
3 copies with you?
4 BY MR. PLACITELLA:
5 Q. "Enclosed is an affidavit by William H.
6 Ashton who has been involved in investigating and
7 studying the talc industry and talc technology for
8 over 35 years."
9 And is that -- have you ever seen the
10 Ashton affidavit?
11 A. I've seen it. I don't know if I've read
12 it, but I've seen it.
13 Q. In his affidavit, Mr. Ashton summarizes a
14 number of reports, studies, and analyses from the
15 1940s to the 1980s of the talc produced at the
16 Johnson, Vermont talc mine that was owned and
17 operated by EMTAL from 1967 to 1983. Are you with
18 me?
19 A. Yes.
20 Q. Okay.
21 A. Again, I can't see it very well on the
22 screen, so --

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1 MR. FARRELL: And I can't see it either
2 and I don't have a copy.
3 BY MR. PLACITELLA:
4 Q. Well, I'll give it back to you. Let me
5 show you.
6 "The unequivocal conclusion reached by
7 all these investigations, as set forth in
8 Mr. Ashton's affidavit, is that the talc from the
9 Johnson, Vermont mine, which was Engelhard's only
10 talc mine, did not contain asbestos."
11 Here, I'll give it to you to see if I've
12 read that correctly.
13 (Witness hands the document to
14 Mr. Farrell.)
15 MR. FARRELL: Thank you.
16 (Witness reading over the document.)
17 THE WITNESS: Okay. I've read it.
18 BY MR. PLACITELLA:
19 Q. Do you see in the last page the Cahill
20 Gordon firm is cc'd?
21 A. Yes.
22 Q. Okay. So, if there was available

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1 evidence that showed that there was asbestos
2 throughout the talc -- the EMTAL mine, that would be
3 significant, don't you think --

4 MR. FARRELL: Objection --

5 BY MR. PLACITELLA:

6 Q. -- in light of these representations?

7 MR. FARRELL: Objection to form,
8 foundation, beyond the scope of the notice, assumes
9 facts.

10 THE WITNESS: I -- I'm not sure what you
11 mean by representations. This is a statement that
12 several investigations were reviewed and that the
13 equivocal -- unequivocal conclusion from those
14 investigations was that there was no talc in the mine
15 from those investigations.

16 BY MR. PLACITELLA:

17 Q. And based on that representation,
18 Engelhard was demanding the plaintiff's lawyer
19 dismiss all those cases. Right?

20 MR. FARRELL: Objection to form,
21 foundation, beyond the scope of the notice.

22 Are we really -- this is what we're going

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1 to know. I don't know what you mean specifically
2 here.

3 BY MR. PLACITELLA:

4 Q. Well, the EMTAL mine I'm talking about.

5 MR. FARRELL: Same --

6 BY MR. PLACITELLA:

7 Q. If there was available evidence that
8 showed asbestos throughout the EMTAL mine, that would
9 be significant. That's all I'm asking you.

10 MR. FARRELL: Same objections.

11 THE WITNESS: I guess my feeling is I
12 have nothing to lead me to conclude that there was
13 asbestos throughout the mine.

14 BY MR. PLACITELLA:

15 Q. Okay.

16 A. So, it's a hypothetical, I guess.

17 Q. If evidence was lost or destroyed that
18 was proven there was asbestos throughout the EMTAL
19 mine, that would be significant, don't you think?

20 MR. FARRELL: Objection to form,
21 foundation, beyond the scope of the notice, calls for
22 speculation.

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1 to do here today? We are going to cover these
2 questions?

3 MR. PLACITELLA: Well, I would be done if
4 you'd stop talking.

5 MR. FARRELL: Well, why don't we get the
6 Court on the phone, and we'll talk about how this
7 relates to your notice.

8 MR. PLACITELLA: As soon as we take a
9 break.

10 MR. FARRELL: Mr. Placitella, how does
11 this relate to the location and completeness of --

12 MR. PLACITELLA: I'm going to get there
13 in about 30 seconds if you let me ask the questions.

14 BY MR. PLACITELLA:

15 Q. Sir, if there was available evidence that
16 showed asbestos throughout the mine, that would be
17 significant. Correct?

18 MR. FARRELL: Objection to form,
19 foundation, beyond the scope of the notice, assumes
20 facts.

21 THE WITNESS: In what context? I mean,
22 asbestos information in any mine would be important

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1 THE WITNESS: You never want to lose or
2 destroy evidence. As I've mentioned, I've done a lot
3 of preparation. Everything I've looked at indicates
4 that these -- the documents related to EMTAL testing
5 at the mine have -- have survived for 40 years. It's
6 remarkable that they are still around. And I have no
7 evidence that any were destroyed.

8 BY MR. PLACITELLA:

9 Q. Okay. So, you reviewed Dr. Hemstock's
10 deposition from the Westfall case. Correct?

11 A. Yes, I read it.

12 Q. And that's one of the documents you
13 produced and you rely upon. Correct?

14 MR. FARRELL: Objection to form.

15 THE WITNESS: Yes. I -- we produced it,
16 yes.

17 BY MR. PLACITELLA:

18 Q. And do you recall that, in his
19 deposition, Dr. Hemstock said that his department
20 initiated a study of the EMTAL mine. Do you recall
21 that?

22 MR. FARRELL: Objection to form. The

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<p>1 testimony speaks for itself.</p> <p>2 THE WITNESS: I'd have to look at that</p> <p>3 again.</p> <p>4 BY MR. PLACITELLA:</p> <p>5 Q. Can you get Dr. Hemstock's transcript</p> <p>6 out?</p> <p>7 A. From 1983?</p> <p>8 Q. Yes, sir, the second day.</p> <p>9 Do you have that in front of you?</p> <p>10 A. Yes.</p> <p>11 Q. See, you go up the page, line 2. I'm</p> <p>12 talking about the study that Dr. Hemstock has</p> <p>13 testified to --</p> <p>14 A. I'm sorry. What page are you on?</p> <p>15 Q. 119.</p> <p>16 A. Okay, I'm there.</p> <p>17 Q. "I'm talking about the study that</p> <p>18 Dr. Hemstock has testified to that took place in 1978</p> <p>19 and 1979 in which Mr. Gale took part."</p> <p>20 Are you aware of that study, sir?</p> <p>21 A. I'm generally aware -- again, I prepared</p> <p>22 for this deposition in a way that I would know where</p>	<p>1 report ever issued?</p> <p>2 MR. FARRELL: Objection to form and</p> <p>3 foundation.</p> <p>4 THE WITNESS: I haven't seen a final</p> <p>5 report. If he couldn't recall one at the time and</p> <p>6 that was only a couple of years after the fact, I</p> <p>7 would conclude that there probably never was one, but</p> <p>8 I haven't seen a final report.</p> <p>9 BY MR. PLACITELLA:</p> <p>10 Q. Did you ask your lawyers whether there</p> <p>11 was a final report?</p> <p>12 MR. FARRELL: Objection to form and</p> <p>13 foundation.</p> <p>14 THE WITNESS: No, but we have all of</p> <p>15 the -- we have the data that was generated during</p> <p>16 those periods.</p> <p>17 BY MR. PLACITELLA:</p> <p>18 Q. See, that's the problem. We really</p> <p>19 don't, and I want to talk about that.</p> <p>20 MR. FARRELL: Objection, argumentative.</p> <p>21 BY MR. PLACITELLA:</p> <p>22 Q. It says, down below, "Dr. Hemstock, do</p>
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<p>1 documents are and what documents are available. I</p> <p>2 didn't study the study itself.</p> <p>3 Q. I understand that. That's what I'm going</p> <p>4 to get to. But I have to do some preliminary</p> <p>5 questions.</p> <p>6 "Yes, there were that probably appeared</p> <p>7 in memoranda. I think we have seen the results of</p> <p>8 them this afternoon.</p> <p>9 "Well, the memoranda that we've seen or</p> <p>10 brief memoranda without conclusions or summaries of</p> <p>11 the results of the tests, was there any final report</p> <p>12 that was written regarding that series of tests?"</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. And Dr. Hemstock says, "I don't recall</p> <p>16 that there was."</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Okay.</p> <p>20 "You don't recall that there was?</p> <p>21 "ANSWER: I don't recall that there was."</p> <p>22 Do you know whether there was a final</p>	<p>1 you have any question what study I'm asking you</p> <p>2 about?</p> <p>3 "ANSWER: I assume you're talking about</p> <p>4 the study in which Mr. Gale and I visited the mine.</p> <p>5 "QUESTION: That's right.</p> <p>6 "ANSWER: That study probably occurred</p> <p>7 over several months, but it was not a dedicated</p> <p>8 effort on anybody's part. It was a relatively small</p> <p>9 study that was almost like a TSR except it was</p> <p>10 initiated within my department as opposed to being</p> <p>11 requested by others."</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Okay.</p> <p>15 "And why was it initiated within your</p> <p>16 department?</p> <p>17 "Mr. Gale and I, I had never been to the</p> <p>18 EMTAL mine or plant, nor had Mr. Gale. Mr. Gale had</p> <p>19 just joined the organization, and we were generally</p> <p>20 interested in learning more about the nature of the</p> <p>21 EMTAL deposit."</p> <p>22 Do you see that?</p>

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1 A. Yes.

2 MR. FARRELL: Objection to form.
3 BY MR. PLACITELLA:

4 Q. "And I was personally interested in
5 seeing the processing operation.

6 "One of the purposes of the study was to
7 determine asbestos content in the talc and the ore.
8 Is that correct?

9 "ANSWER: No, it was not.

10 "QUESTION: It was not?

11 "ANSWER: No, it was not. It was a
12 broader intent than that. We wanted to see the
13 general geology of the deposit. We wanted to find
14 out what other mineral constituents were there. If
15 we found asbestos that was, so be it. We were
16 looking for other things like magnesite content, iron
17 carbonate content and other extraneous minerals like
18 chlorite, like sphene. So, it was a much broader
19 study than you had indicated.

20 "QUESTION: And was asbestos one of the
21 minerals that was looked for?

22 "ANSWER: We looked for fibers. We were

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1 interested in morphology. We were interested in
2 knowing what talc -- what our talc, the basic
3 morphology of the talc deposit. If we found fibers,
4 when you are looking in an electron microscope, you
5 see what you see.

6 "QUESTION: My question was: Was
7 asbestos one of the minerals that was looked for in
8 the talc?

9 "ANSWER: Yes, it was one of the
10 minerals.

11 "QUESTION: How many other studies did
12 your department initiate of its own the way you
13 describe this report, this study, as being initiated
14 on its own during the time that you've been
15 associated with the department?

16 "ANSWER: To my knowledge, none.

17 "QUESTION: This is the only one?

18 "ANSWER: That is correct."

19 Do you see that?

20 A. Yes.

21 Q. Did I read that correctly?

22 A. Yes.

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1 Q. Okay. So, have you found any other
2 evidence of any other studies of the mine conducted
3 by or on behalf of Engelhard or BASF in preparing for
4 today's deposition?

5 MR. FARRELL: Objection to form,
6 foundation, vague.

7 THE WITNESS: I'm sorry. Could you ask
8 that again, sir?

9 BY MR. PLACITELLA:

10 Q. Other than the study that Dr. Hemstock is
11 talking about where he and Mr. Gale went to the mine
12 to determine what was in it -- are you with me?

13 A. Yes. This was a geologic survey
14 generally, yes.

15 Q. Okay. Have you found any other studies
16 or were you provided any other studies that were
17 conducted by Engelhard or BASF or on their behalf
18 related to whether there was asbestos in the mine
19 itself?

20 MR. FARRELL: Objection to form,
21 foundation, vague as to "studies."

22 THE WITNESS: Well, we've talked about

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1 and produced dozens of studies that had to do with
2 analysis of EMTAL products for potential presence of
3 asbestos.

4 There were studies conducted by NIOSH in
5 the 1970s in that mine that were published, both of
6 which showed no presence of asbestos. There may be
7 other studies that we produced. I -- I can't think
8 of them off the top of my head, but, yes, many
9 studies have been produced. We have given you many
10 documents that relate to the analysis of samples.

11 BY MR. PLACITELLA:

12 Q. Well, it is very important for me to know
13 and understand, pursuant to the Court's order, what
14 studies conducted by Engelhard of the Johnson mine,
15 what was in the Johnson mine -- not the finished
16 product, in the mine -- have you brought with you
17 today.

18 MR. FARRELL: Objection to form,
19 foundation.

20 BY MR. PLACITELLA:

21 Q. What studies?

22 MR. FARRELL: Objection to form,

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1 foundation, asked and answered, vague.

2 THE WITNESS: Again, I would say some of
3 the published studies that NIOSH performed that
4 showed the presence of no asbestos, included rock
5 samples as well as airborne sampling, I believe. We
6 have some -- we have recovered some rock samples that
7 were obtained at the time and have been produced.

8 BY MR. PLACITELLA:

9 Q. With all due respect, I'm not asking you
10 about NIOSH or what you've done recently. I'm asking
11 you: Have you located any studies conducted by
12 Engelhard of the Johnson mine other than the study
13 that's referenced by Dr. Hemstock in his deposition?

14 MR. FARRELL: Objection to form,
15 foundation, harassing the witness, asked and
16 answered, vague as to "study."

17 Go ahead, Mr. Steinmetz.

18 THE WITNESS: Yes. We've presented
19 dozens of documents that show analysis of samples
20 from the -- that were taken from the Johnson mine.

21 BY MR. PLACITELLA:

22 Q. Can you show me them, sir? Because I

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1 haven't seen them.

2 A. I can just --

3 Q. Other than -- other than the study that
4 was conducted by Dr. Hemstock and Dr. Gale.

5 A. There was -- I can just go through the
6 book of exhibits here. There was a study of -- dated
7 September 6, 1977. This was a TSR from Zimmermann to
8 Marchetti concerning --

9 Q. What tab are you looking at?

10 A. -- samples for tremolite.

11 Q. What -- what tab are you looking at?

12 A. Beg your pardon?

13 Q. What tab are you looking at?

14 A. This is -- I just chose one at random.
15 This is Tab 6 of the --

16 Q. Of Exhibit 15?

17 A. Yes.

18 Q. This is of -- this is of the EMTAL mine?
19 These are samples from the EMTAL mine?

20 A. These are -- these are samples --

21 MR. FARRELL: Objection to form,
22 foundation.

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1 Go ahead.

2 THE WITNESS: These are EMTAL samples
3 that were produced at the EMTAL mine. If you go to
4 Tab 7 --

5 BY MR. PLACITELLA:

6 Q. Excuse me. I want to make sure we are
7 clear.

8 You are saying that these are testing
9 results of samples of the mine itself, not the
10 finished product.

11 MR. FARRELL: Objection to --

12 BY MR. PLACITELLA:

13 Q. That's what you're saying.

14 MR. FARRELL: Objection to form,
15 foundation.

16 BY MR. PLACITELLA:

17 Q. Do you understand the distinction, sir?

18 MR. FARRELL: One moment.

19 Which tab are you on, Mr. Steinmetz?

20 THE WITNESS: I'm on, I guess, going
21 back, I'm on Tab 6 still, because --

22 MR. PLACITELLA: Let me -- let me back

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1 up.

2 MR. FARRELL: I just want to be sure I'm
3 in the same spot. Tab 6 of the Hemstock --

4 THE WITNESS: Yes --

5 MR. FARRELL: -- binder?

6 THE WITNESS: -- of P-19. So, the
7 Hemstock binder.

8 BY MR. PLACITELLA:

9 Q. Let's be clear on what we're doing here.

10 A. Okay.

11 Q. You understand there were samples taken
12 of the product itself after manufacture. Correct?

13 A. Yes.

14 Q. There were also samples done of the
15 actual ore talc from the mine. Correct?

16 A. I'm not sure what you mean by that
17 question.

18 Q. Where the people went into the mine, took
19 the rock and sampled to see if there was asbestos
20 before it was processed. You understand that that
21 happened. Correct?

22 A. I don't understand what you mean by "I

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1 understand that that happened." When -- what
2 timeframe are we talking about? I'm sorry.

3 Q. During the time that Engelhard owned the
4 mine, is it your understanding -- do you understand
5 that they did sampling of the finished product --

6 MR. FARRELL: Objection to form.
7 BY MR. PLACITELLA:

8 Q. -- to determine if there was asbestos?

9 A. Yes, there was sampling done. And there
10 was analysis done of finished product samples.

11 Q. There were also air samples done.
12 Correct?

13 A. That's correct.

14 Q. And there were also samples done of the
15 ore that was coming out of the mine. Correct?

16 A. I don't know. Again, I have to tell you,
17 I didn't read each one of these documents for the
18 details of what was actually being analyzed. I
19 looked at the documents in their totality to see
20 where they came from, what their source was, and
21 whether they were here.

22 So, I'd have to read through every

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1 document to look at whether they were looking at rock
2 samples or airborne particulate samples or product
3 samples.

4 Q. Well, that's the problem I'm having.
5 Okay?

6 Do you see where Dr. Hemstock said this
7 is the only study that he was aware of that was
8 originated by Engelhard of studying the ore itself in
9 the mine. You got that?

10 MR. FARRELL: Objection.
11 BY MR. PLACITELLA:

12 Q. You want to go back and look at it?

13 MR. FARRELL: Objection to form,
14 argumentative.

15 THE WITNESS: That's what he said, but he
16 also seemed to indicate that he wasn't sure what
17 was -- what was in existence. It's the ones he
18 knew -- that's what he knew of.

19 BY MR. PLACITELLA:

20 Q. He doesn't say that anywhere, does he?
21 He says he's not sure whether there was a final
22 report generated.

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1 A. I'm sorry. I'd have to -- what page are
2 we looking at?

3 Q. 119 to 121.

4 A. Well, yes. He doesn't say there weren't
5 any other studies where they might have looked at
6 rock samples. What he says was there were no other
7 such studies that his department did. And those
8 studies, he made clear was, it was a broad study that
9 was intended to look at the general geology of the
10 deposit, looking at mineral constituents.

11 So, you know, he was talking in the
12 context of what that study was. I don't know whether
13 he was -- how generalized he was perceiving that
14 question to be.

15 Q. He says, on page 121, he's asked, "My
16 question was: Was asbestos one of the minerals that
17 was looked for in the talc?"

18 "Yes. It was one of the minerals.

19 "How many other such studies did your
20 department initiate on its own the way you described
21 this report -- this study as being initiated on its
22 own during the time that you've been associated with

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1 that department?

2 "To my knowledge, none.

3 "This is the only one?

4 "That's correct."

5 Do you see that.

6 A. I see it, but the way I read this is it's
7 a one-of-a-kind study where they went to -- actually
8 went to the mine. He went to the mine with somebody
9 else.

10 Q. Mr. Gale.

11 A. With Mr. Gale. They looked at the
12 general geology. They looked for mineralogy. They
13 looked for fibers. I mean, this was a pretty
14 expansive study, and he makes it clear that it was
15 very expansive and one of a kind, that it wasn't
16 just -- it wasn't just a study of asbestos. It was a
17 general big, expansive study.

18 So, he said this is the only one that
19 they did, and I -- that steams like it would be a
20 one-of-a-kind study.

21 Q. And my question simply was this: Did you
22 bring with you -- have you seen results of any other

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<p>1 studies of the mine, not the end product, that was 2 initiated by Engelhard? 3 MR. FARRELL: Objection to form, 4 foundation, asked and answered. 5 THE WITNESS: And if you mean other 6 studies of the mine that are like this, where they 7 looked at -- where they went to the mine, did 8 geology, did mineralogy, looked for fibers and it was 9 very expansive in scope, no. I wouldn't think that 10 people would do that regularly. I haven't seen 11 another one. 12 BY MR. PLACITELLA: 13 Q. Okay. So, we're finally on the sane 14 page. 15 Do you see anywhere in Dr. Hemstock's 16 testimony that this study was initiated by the legal 17 department in any way? 18 MR. FARRELL: Objection to form, 19 foundation, beyond the scope of the notice. 20 THE WITNESS: From the pages we've read, 21 I don't see that. I'd have -- I don't recall that 22 that was the case.</p>	<p>1 employees within Engelhard who were involved in that 2 testing program?" 3 And the objection: "There is no 4 timeframe. Are we talking about '79 again?" 5 "Yes. 6 "QUESTION: Do you have any confusion as 7 to the time period I'm discussing? 8 "No, I don't. There was, of course, our 9 geologist at the time, Peter Gale. He was doing 10 quite a bit of legwork going down to the mine and 11 bringing the samples over to the Georgia Institute, 12 but he left when the investigation was only halfway 13 through. 14 "So, the burden of that fell on me, 15 because I was next in line as far as mineralogic 16 expertise went and knowing where to send the samples 17 and who to contact. I was the one -- I was the one 18 that was, you know, called on to do that." 19 Do you see that? 20 A. Yes. 21 Q. Okay. So, do you recall that, in 22 Mr. Hemstock's deposition, he was -- he discussed the</p>
Page 615	Page 617
<p>1 BY MR. PLACITELLA: 2 Q. Well, he said the purpose of the study 3 was it originated with him and his department. 4 Correct? Not the legal department. Correct? 5 MR. FARRELL: Objection to form, 6 foundation, beyond the scope of the notice. 7 THE WITNESS: That's what -- that's what 8 the transcript says. 9 BY MR. PLACITELLA: 10 Q. Okay. Now, you're aware that, according 11 to Dr. Triglia, in his deposition, he said that he 12 actually took over this study from Mr. Gale when 13 Mr. Gale left the employ of Engelhard. Do you recall 14 that? 15 A. Again, I didn't prepare in that much 16 detail for this kind of questioning, but I'd have to 17 look at it. I believe you. I just don't recall it. 18 Q. If you go to Mr. Triglia's transcript, 19 where he starts on the bottom of page 55, do you see 20 that? He talks about embarking on a testing program? 21 A. Yes. 22 Q. And then he's asked: "Who are the</p>	<p>1 results of his investigation, and he produced 2 documents relating to the results of his 3 investigation that happened up in the mine. Do you 4 recall that? 5 MR. FARRELL: Objection to form. 6 THE WITNESS: I'd have to look at it. I 7 don't recall off the top of my head. 8 BY MR. PLACITELLA: 9 Q. Okay. That's fair. 10 Look at page 117. 11 MR. FARRELL: Of what? 12 MR. PLACITELLA: Dr. Hemstock's 13 transcript. 14 MR. FARRELL: We've been going over an 15 hour. I'd like to take a break. 16 MR. PLACITELLA: That's fine. 17 THE VIDEOGRAPHER: The time is now 18 11:08 a.m. We're going off the record. 19 (Recess taken.) 20 THE VIDEOGRAPHER: The time is now 21 11:20 a.m. We are back on the record. 22 BY MR. PLACITELLA:</p>

<p style="text-align: right;">Page 618</p> <p>1 Q. So, I have to ask you this, I apologize 2 in advance: During the break, you're not talking 3 about your testimony, are you? 4 A. Absolutely not. 5 Q. You're talking about the nationals and 6 how they are running away with it? 7 A. Sure. 8 Q. So, can we go to 117? 9 A. Yes. 10 Q. Do you see, on the top, it says, "Do 11 you -- do you know that your counsel came over today 12 with a black looseleaf binder that was filled with 13 documents and that this Exhibit 50 is a bundle of 14 copies of all those documents? 15 "ANSWER: Yes. 16 "QUESTION: Are you familiar that series 17 of documents? 18 "ANSWER: I believe this was a record 19 that Mr. Gale kept of some of the raw data that he 20 accumulated." 21 Do you see that? 22 A. Yes.</p>	<p style="text-align: right;">Page 620</p> <p>1 "Over what period of time did the study 2 take place?" 3 And he asks, "Can you be more specific on 4 the study? You're still referring to the visit that 5 Gale and I made and the subsequent analysis? That 6 was only one of many, many TSR-type activities that 7 went on over a long period of time. I don't think it 8 should be highlighted to the degree that you've 9 indicated." 10 Then he says, "Now, there is a memorandum 11 dated March 20, 1979, from Peter Gale to several 12 people, including yourself. The subject of that 13 memorandum is Talc. Is that the talc study or talc 14 investigation? 15 "ANSWER: Talc investigation. 16 "QUESTION: Do you know what Mr. Gale is 17 referring to as the talc investigation? 18 "No, I don't." 19 Do you see that? 20 A. Yes. 21 Q. Do you have that document so we can see 22 what they were referring to?</p>
<p style="text-align: right;">Page 619</p> <p>1 Q. Do you understand that that was the raw 2 data that Mr. Gale accumulated from his trips and 3 studies of the mine? 4 MR. FARRELL: Objection to form, 5 foundation, harassing the witness. 6 THE WITNESS: I'm not sure if it was just 7 from the mine. It may have been other things, but I 8 assume that could have been some of it. 9 BY MR. PLACITELLA: 10 Q. And have you been able to produce that 11 entire binder in response to the Court's order? 12 MR. FARRELL: Objection to form, asked 13 and answered. 14 THE WITNESS: We haven't found the entire 15 exhibit, no. 16 BY MR. PLACITELLA: 17 Q. Can we go to page 126? 18 Starting at line 4, it says, "When did 19 you make the visit with Mr. Gale to the EMTAL 20 facility?" 21 And he says, "It was in the 1978-79 time 22 period.</p>	<p style="text-align: right;">Page 621</p> <p>1 A. The document from March 20, 1979? 2 Q. Yes, sir. 3 A. No. 4 Q. It goes on, if you look on the next page, 5 starting at line 10, it says, "Here's a memorandum 6 dated March 1, 1979, from Mr. Yunko to you, subject 7 'EMTAL talc.' Do you have a recollection of 8 receiving that? 9 "No, I don't. 10 "And so, Mr. Yunko told you, in this 11 memorandum, the issue of properly defining EMTAL talc 12 mineralogy insists on becoming more complicated all 13 of a sudden. Do you have any idea what he's 14 referring to? 15 "No, I don't. 16 "QUESTION" -- and he's reading from the 17 document -- "I'm deferring any action until we have 18 an opportunity to review Peter's findings and 19 recommendations. We'll have to decide on a strategy 20 at that time.' 21 "Do you have any idea -- any knowledge or 22 recollection of what strategy he's referring to?"</p>

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<p>1 He says, "No, I don't." 2 Do you see that? 3 A. Yes, I see it. 4 Q. Do you have or have you been able to 5 produce the March 1, 1979, memo from Mr. Yunko 6 discussed here? 7 MR. FARRELL: Objection to form. 8 THE WITNESS: I believe so. I'd have to 9 look real quickly. I'm not sure. I don't think 10 that's one that we had, but I can look real quickly. 11 (Witness perusing the document.) 12 No, we don't have that one. 13 BY MR. PLACITELLA: 14 Q. So, have you been able to find the -- 15 Peter Gale's findings and recommendations that are 16 referred to on page 127? 17 MR. FARRELL: Objection to form. 18 Can you read that back, please? 19 (The record was read by the court 20 reporter.). 21 MR. FARRELL: Objection to form and 22 foundation.</p>	<p>1 as P-50 was discussed in the Triglia deposition? 2 MR. FARRELL: Objection to form. 3 THE WITNESS: Yes, I recall. Yes. 4 BY MR. PLACITELLA: 5 Q. They pulled some of the documents out, 6 and Mr. Triglia was asked questions about them. Do 7 you recall that? 8 MR. FARRELL: Same objection. 9 THE WITNESS: Yes. 10 BY MR. PLACITELLA: 11 Q. So, let's go there. 12 Go to page 58. Let me know when you're 13 ready. 14 A. Yes, I'm ready. 15 Q. Okay. It says, "I show you a one-page 16 memo dated March 14, 1979, to Gale from Lomas. 17 That's also from Exhibit 50. Correct?" 18 When he is saying Exhibit 50, we're 19 talking about Hemstock Exhibit 50, which is the 20 looseleaf binder. Correct? 21 A. Yes. 22 Q. Okay. And it's marked P-15.</p>
Page 623	Page 625
<p>1 THE WITNESS: Well, we have produced a 2 document from Gale to Triglia April 1979 where he 3 reviews the talc investigation and provides an update 4 with tables. 5 BY MR. PLACITELLA: 6 Q. And is that of the mine or of the 7 production samples? At what tab are you talking 8 about? 9 MR. FARRELL: Objection to form. 10 THE WITNESS: This is part of Tab 50. 11 This is about samples, but I -- I'm not sure that 12 they say they actually did take rock samples. 13 BY MR. PLACITELLA: 14 Q. Are you sure it is Tab 50? 15 A. Part of Tab 50, yes. 16 Q. Oh, I don't have a Tab 50. I have it as 17 withheld, potentially omitted. 18 A. Oh, I'm sorry. I'm talking about the 19 Hemstock exhibit, Tab 50. 20 Q. I'm sorry. My fault. 21 Okay. Am I correct that some of what was 22 in the binder identified in the Hemstock transcript</p>	<p>1 And it says, "Do you know what Exhibit 15 2 is? 3 "ANSWER: Yes, I recognize it. 4 "What is it? 5 "This is a memo from the engineer up at 6 the talc plant, Lomas, Ed Lomas, to Peter Gale, 7 telling him that 38 samples that were requested were 8 picked out and selected, and they were being mailed 9 to him." 10 Do you see that? 11 A. Yes. 12 Q. "Was that prepared by Mr. Lomas in the 13 course of his employment for Engelhard? 14 "I think so. 15 "Was it prepared at or about the date 16 that appears in that memo?" 17 He says, "I think so." Correct? 18 A. Yes. 19 Q. You don't have that exhibit. Correct? 20 MR. FARRELL: Objection to form. 21 THE WITNESS: That's correct. We haven't 22 found all parts of that exhibit, yes.</p>

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1 BY MR. PLACITELLA:
2 Q. Well, you don't have any part of this
3 exhibit, correct?
4 MR. FARRELL: Same objection.
5 THE WITNESS: Not this one specifically.
6 BY MR. PLACITELLA:
7 Q. Okay. So, we don't know, then, although
8 it says Lomas picked out samples, we don't know where
9 the samples were taken from. Correct?
10 MR. FARRELL: Objection to form and
11 foundation.
12 THE WITNESS: I don't know.
13 BY MR. PLACITELLA:
14 Q. We don't know whether the memo would have
15 told us that.
16 MR. FARRELL: Same objection. Calls for
17 speculation.
18 THE WITNESS: I don't know.
19 BY MR. PLACITELLA:
20 Q. We don't know what kind of rock he
21 selected the samples from. Correct?
22 MR. FARRELL: Same objections.

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1 THE WITNESS: I don't know.
2 BY MR. PLACITELLA:
3 Q. We don't know what part of the ore body
4 the samples were taken from. Correct?
5 MR. FARRELL: Same objections.
6 THE WITNESS: I don't know if that
7 information ever existed, but I don't know.
8 BY MR. PLACITELLA:
9 Q. And if it was in this document, we just
10 don't know?
11 MR. FARRELL: Objection to form,
12 foundation, assumes facts, calls for speculation.
13 BY MR. PLACITELLA:
14 Q. Correct?
15 A. I don't know.
16 Q. Okay. The next document on the next
17 page, he continues to talk about -- and we know that
18 we are now talking about the study of the mine that
19 was done by Mr. Hemstock and Mr. Gale. Correct?
20 We're on the same page?
21 A. I believe so. I think they are
22 continuing to talk about that.

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1 Q. Then he says, on the next page, "I show
2 you now a memoranda dated March 20, 1979, from Gale
3 to a list of individuals. This is from Exhibit 50
4 from the prior deposition."
5 You understand that to be the Hemstock
6 deposition. Correct?
7 MR. FARRELL: Objection to form.
8 THE WITNESS: Yes.
9 BY MR. PLACITELLA:
10 Q. Okay. And it's described as "a
11 memorandum from Peter Gale to several individuals
12 dated 3-20-79 we received and marked as P-16 for
13 identification."
14 And he's asked, "Do you know what P-16
15 is?"
16 "Yes."
17 "What is that?"
18 "ANSWER: This is a memo written by Peter
19 Gale, and he's reporting on the trip that he and
20 Dr. Hemstock undertook up to the Vermont mine to
21 examine the EMTAL operation."
22 Correct?

Page 629

1 A. Yes.
2 Q. You don't have that exhibit either.
3 Correct?
4 MR. FARRELL: Objection to form,
5 foundation, asked and answered over the course of
6 five hours on day two of the deposition.
7 MR. PLACITELLA: Thank you for you
8 testimony.
9 THE WITNESS: We haven't found it yet.
10 BY MR. PLACITELLA:
11 Q. Okay. And we don't know what was
12 contained in that report, do we?
13 MR. FARRELL: Objection to form,
14 foundation.
15 THE WITNESS: Well, again, we do know the
16 types of information that came from that work because
17 Gale, as I mentioned before, Gale did produce talc
18 investigation summaries. So, that gives us some
19 information on -- on what Gale had found.
20 BY MR. PLACITELLA:
21 Q. But we don't know what was in that report
22 in terms of results that he found. Correct?

Page 630	Page 632
<p>1 MR. FARRELL: Objection to form, 2 foundation, calls for speculation. 3 THE WITNESS: We only know what we know 4 from the Gale talc investigation summary that we 5 produced. 6 BY MR. PLACITELLA: 7 Q. The Gale talc investigation summary 8 doesn't tell -- well, I want to get to that in a 9 little bit. 10 But I'm just talking about this 11 particular document. We don't know what results were 12 contained in that document, if any. Correct? 13 MR. FARRELL: Objection to form, 14 foundation, asked and answered. 15 THE WITNESS: We haven't found the 16 document yet. 17 BY MR. PLACITELLA: 18 Q. Okay. We don't know where the samples 19 were taken from based upon that document. Correct? 20 MR. FARRELL: Objection to form and 21 foundation. 22 THE WITNESS: We haven't found the</p>	<p>1 And this also came from Exhibit 50 of the 2 Hemstock transcript. Correct? 3 A. Yes. 4 Q. Okay. And he describes it. The 5 questioner says, "What I have bundled together is a 6 memo dated March 16th, together with three pages of 7 maps that are referenced in the memo -- in the 8 memorandum that's P-16." 9 Do you see that? 10 A. Yes. 11 Q. And he's asked, "What is P-16, 12 Mr. Triglia?" 13 And he answers, "All right. This is 14 another memo from Lomas to Dr. Hemstock, this time 15 listing the samples from the areas that already had 16 been preselected, and they were marked according to 17 the type of basic rock that was there. 18 "There were four basic types of rock that 19 he noted. 'The T purifies -- signifies pure talc, 20 and G signifies grit or talc carbonate ore, and the B 21 signifies black chloritic schist, and S signifies 22 serpentine.'"</p>
Page 631	Page 633
<p>1 document. 2 BY MR. PLACITELLA: 3 Q. We don't know what percentage of the 4 samples that were tested were found to have asbestos 5 versus not -- not having asbestos. Correct? 6 MR. FARRELL: Objection to form, 7 foundation, beyond the scope of the notice. 8 THE WITNESS: I don't know. We haven't 9 found it, and we don't even know if they were looking 10 for asbestos. 11 BY MR. PLACITELLA: 12 Q. You don't know if they found asbestos. 13 Correct? 14 MR. FARRELL: Same objection. Beyond the 15 scope. 16 THE WITNESS: I don't know. 17 BY MR. PLACITELLA: 18 Q. Can we -- it goes on -- go to the next 19 page, 60, starting line 9. 20 "Now I'd like to show you a memorandum 21 that's dated March 16, 1979, to Mr. Hemstock from 22 Mr. Lomas."</p>	<p>1 Do you see that? 2 A. Yes. 3 Q. Okay. Now, if we had that memo, 4 presumably, we could tell from the maps exactly where 5 each sample was taken from; correct, according to 6 this description? 7 MR. FARRELL: Objection to form, 8 foundation, calls for speculation, beyond the scope 9 of the notice. 10 THE WITNESS: I -- I don't know. 11 BY MR. PLACITELLA: 12 Q. That memo might tell us whether the 13 samples were taken from the main ore body where the 14 product was mined for production. Correct? 15 MR. FARRELL: Objection to form, 16 foundation, calls for speculation. Asked and 17 answered. 18 THE WITNESS: I -- I haven't seen it, so 19 I don't know what was in it. 20 BY MR. PLACITELLA: 21 Q. The memo might tell us what was found in 22 each basic rock type. Correct?</p>

Page 634	Page 636
<p>1 MR. FARRELL: Same objections.</p> <p>2 THE WITNESS: I don't know.</p> <p>3 BY MR. PLACITELLA:</p> <p>4 Q. Okay. If we had this memo, I could have</p> <p>5 asked Dr. Hemstock, when I took his deposition, to</p> <p>6 explain it to me. Correct?</p> <p>7 MR. FARRELL: Same objections, calls for</p> <p>8 speculation.</p> <p>9 THE WITNESS: You could ask him whatever</p> <p>10 you wanted, yes.</p> <p>11 BY MR. PLACITELLA:</p> <p>12 Q. And because I didn't have that memo, I</p> <p>13 was precluded from asking him questions about where</p> <p>14 the samples were taken from, exactly what kind of</p> <p>15 rock was tested, and where it was tested from.</p> <p>16 Correct?</p> <p>17 MR. FARRELL: Objection to form,</p> <p>18 foundation, beyond the scope of the notice, calls for</p> <p>19 speculation.</p> <p>20 THE WITNESS: I don't know what you can</p> <p>21 ask in a deposition or what you can't ask.</p> <p>22 BY MR. PLACITELLA:</p>	<p>1 set of handwritten notes on graph paper. It's</p> <p>2 entitled Engelhard Minerals and Chemicals</p> <p>3 Calculation. There is a name at the top of Mark</p> <p>4 Palenik."</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. And it says, "This is also from</p> <p>8 Exhibit 50." Correct?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. We don't have that document</p> <p>11 either. Correct?</p> <p>12 MR. FARRELL: Objection to form.</p> <p>13 THE WITNESS: We haven't found that</p> <p>14 document yet.</p> <p>15 BY MR. PLACITELLA:</p> <p>16 Q. Okay. Let's go now to where he talks</p> <p>17 about Exhibit 18. We are still all talking about</p> <p>18 this test study that was done up at the mine. Are</p> <p>19 you with me?</p> <p>20 MR. FARRELL: Objection to form and</p> <p>21 foundation.</p> <p>22 THE WITNESS: I'm not sure it's clear</p>
Page 635	Page 637
<p>1 Q. He talks about S signifies serpentine.</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Did you know that serpentine was a</p> <p>5 precursor for chrysotile asbestos?</p> <p>6 MR. FARRELL: Objection to form,</p> <p>7 foundation, beyond the scope of the notice.</p> <p>8 THE WITNESS: I'm really not prepared to</p> <p>9 talk about the specifics of asbestos and the</p> <p>10 technical aspects of it.</p> <p>11 BY MR. PLACITELLA:</p> <p>12 Q. But if I had the map, at least according</p> <p>13 to this description, I would be able to tell where</p> <p>14 the serpentine was that was tested in the mine.</p> <p>15 Correct?</p> <p>16 MR. FARRELL: Same objections. Harassing</p> <p>17 the witness.</p> <p>18 THE WITNESS: I don't know what you could</p> <p>19 tell based on this.</p> <p>20 BY MR. PLACITELLA:</p> <p>21 Q. Go down to line 14. Do you see where it</p> <p>22 says, "Mr. Triglia, I'm going to show you a five-page</p>	<p>1 from this that they are still talking about that, but</p> <p>2 they have been talking about that.</p> <p>3 BY MR. PLACITELLA:</p> <p>4 Q. Okay. Let's go to line 14 of page 63.</p> <p>5 It says, "I have here a multi-page</p> <p>6 collection of handwritten notes on graph paper. The</p> <p>7 graph paper has a heading -- heading, rather, of</p> <p>8 'Engelhard Minerals and Chemicals Calculation.'"</p> <p>9 And he marks that as Exhibit 19. Do you</p> <p>10 see that?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And he says, "I'd like to have</p> <p>13 you, Mr. Triglia, look through that and tell me</p> <p>14 whether you recognize what they are."</p> <p>15 He looks at it, and then on the next page</p> <p>16 it says, "Mr. Triglia, have you had an opportunity to</p> <p>17 review Plaintiff's 19 in this case?</p> <p>18 "Yes, I've looked at it.</p> <p>19 "Do you know what it is?</p> <p>20 "It's just some doodling by Peter Gale to</p> <p>21 calculate, you know, what he found, I think in the</p> <p>22 test, and try to make some sense of it."</p>

Page 638	Page 640
<p>1 Do you see that?</p> <p>2 A. Yes, I see it.</p> <p>3 Q. "Do you recognize the handwriting on the</p> <p>4 pages in the document as being Peter Gale's</p> <p>5 handwriting?</p> <p>6 "ANSWER: I'm pretty sure it is.</p> <p>7 "QUESTION: Are those laboratory notes?</p> <p>8 "ANSWER: I think these were</p> <p>9 preparations. This was preparatory to making the</p> <p>10 notations in the notebook."</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And you don't have that document.</p> <p>14 Right?</p> <p>15 MR. FARRELL: Objection to form,</p> <p>16 foundation.</p> <p>17 THE WITNESS: I'm sorry. The document</p> <p>18 discussed here, which is part of --</p> <p>19 BY MR. PLACITELLA:</p> <p>20 Q. -- Mr. Gale's calculations.</p> <p>21 A. No, we have not found that.</p> <p>22 MR. FARRELL: Objection to form and</p>	<p>1 BY MR. PLACITELLA:</p> <p>2 Q. Where is this notebook that they are</p> <p>3 referring to here, Mr. Gale's notebook? Do you have</p> <p>4 that?</p> <p>5 MR. FARRELL: Objection.</p> <p>6 BY MR. PLACITELLA:</p> <p>7 Q. At least we can look there and see what's</p> <p>8 in his notebook.</p> <p>9 MR. FARRELL: Objection to form.</p> <p>10 THE WITNESS: I think we discussed this</p> <p>11 the last time. In his testimony, he wasn't all that</p> <p>12 clear as to whether he had a notebook. He said he</p> <p>13 had been issued one, but then it seemed to be that he</p> <p>14 was unclear as to whether he had used it.</p> <p>15 BY MR. PLACITELLA:</p> <p>16 Q. But Mr. -- we have some more support for</p> <p>17 that now, don't we? Dr. Hemstock says it would be in</p> <p>18 his notebook. Right? Where is the notebook?</p> <p>19 MR. FARRELL: Objection to form,</p> <p>20 foundation, asked and answered over the course of</p> <p>21 hours in day two, harassing the witness.</p> <p>22 THE WITNESS: I don't know whether</p>
Page 639	Page 641
<p>1 foundation.</p> <p>2 BY MR. PLACITELLA:</p> <p>3 Q. You don't know what the calculation</p> <p>4 showed, then. Correct?</p> <p>5 MR. FARRELL: Objection to form,</p> <p>6 foundation, beyond the scope of the notice.</p> <p>7 THE WITNESS: We haven't found that.</p> <p>8 BY MR. PLACITELLA:</p> <p>9 Q. You don't know whether the calculation</p> <p>10 showed that they found asbestos when they went up</p> <p>11 there. Correct?</p> <p>12 MR. FARRELL: Same objections.</p> <p>13 THE WITNESS: We haven't found it.</p> <p>14 Again, we have a lot of data from that study, but we</p> <p>15 haven't found that document.</p> <p>16 BY MR. PLACITELLA:</p> <p>17 Q. You don't know whether the calculations</p> <p>18 told us where the samples came from. Correct?</p> <p>19 MR. FARRELL: Objection to form,</p> <p>20 foundation, calls for speculation.</p> <p>21 THE WITNESS: I'm not sure that was in</p> <p>22 the document originally, so, I don't know.</p>	<p>1 Hemstock would know any better than I would know</p> <p>2 whether he kept it in the notebook.</p> <p>3 BY MR. PLACITELLA:</p> <p>4 Q. So, his boss, who went with him to the</p> <p>5 mine and did the study, wouldn't know any better than</p> <p>6 you as to whether he kept a notebook of his findings?</p> <p>7 Is that what you're telling this jury under oath?</p> <p>8 MR. FARRELL: Objection to form,</p> <p>9 foundation, argumentative.</p> <p>10 THE WITNESS: That's what I feel.</p> <p>11 MR. FARRELL: Do you have something new</p> <p>12 to cover, Mr. Placitella?</p> <p>13 MR. PLACITELLA: I'm covering lots of new</p> <p>14 stuff, Mr. Farrell.</p> <p>15 MR. FARRELL: This is all material that</p> <p>16 was covered at length here during day two --</p> <p>17 MR. PLACITELLA: All I did on day two was</p> <p>18 catalog what was missing.</p> <p>19 MR. FARRELL: Excuse me. I'm speaking.</p> <p>20 You went to the Court and demanded a</p> <p>21 third day of this deposition on the argument that you</p> <p>22 get to cover talc samples. We have yet to cover the</p>

<p style="text-align: right;">Page 642</p> <p>1 talc samples.</p> <p>2 And you said you wanted to ask about</p> <p>3 documents in P-5. We came in prepared to talk about</p> <p>4 P-5. You set those pages aside, and you haven't</p> <p>5 asked a single question about them. Instead, we're</p> <p>6 here reviewing exhibits from the Triglia and Hemstock</p> <p>7 depositions which you covered over the course of five</p> <p>8 hours in day two of the deposition of what had been</p> <p>9 located and hasn't been located.</p> <p>10 We are basically redoing day two at this</p> <p>11 point, and beyond that, you've asked questions that</p> <p>12 are clearly beyond the scope of the notice, including</p> <p>13 about letters from Cahill Gordon in the 1980s, other</p> <p>14 plaintiffs in other cases, which is both irrelevant</p> <p>15 here and beyond the scope of the notice.</p> <p>16 Are you going to get to something new</p> <p>17 that you told the Court justified a third day of this</p> <p>18 deposition?</p> <p>19 MR. PLACITELLA: Are you done now?</p> <p>20 MR. FARRELL: Can you answer my question?</p> <p>21 MR. PLACITELLA: I'm not answering any of</p> <p>22 your questions today, sir. Are you done now?</p>	<p style="text-align: right;">Page 644</p> <p>1 answered multiple times, harassing the witness.</p> <p>2 BY MR. PLACITELLA:</p> <p>3 Q. Can you answer, please?</p> <p>4 A. Based on Gale's testimony, I don't know</p> <p>5 if there ever was a notebook.</p> <p>6 Q. You don't have the notebook referenced by</p> <p>7 Dr. Hemstock of Mr. Gale, do you?</p> <p>8 A. We haven't found one, and based on Gale's</p> <p>9 testimony, I don't know if there ever was one.</p> <p>10 MR. FARRELL: Objection to form, asked</p> <p>11 and answered.</p> <p>12 BY MR. PLACITELLA:</p> <p>13 Q. Okay. Now, can you look at your -- in</p> <p>14 P-15, Tab 32?</p> <p>15 A. Yes.</p> <p>16 MR. FARRELL: You said 32?</p> <p>17 MR. PLACITELLA: Yes, sir.</p> <p>18 BY MR. PLACITELLA:</p> <p>19 Q. It is the September 19, 1979, memo from</p> <p>20 GTEES, that's Georgia Institute of Technology, to</p> <p>21 Mr. Triglia.</p> <p>22 Do you see that?</p>
<p style="text-align: right;">Page 643</p> <p>1 The Court will review the transcript and</p> <p>2 make its own judgment.</p> <p>3 Are you done now?</p> <p>4 MR. FARRELL: Can you answer my question?</p> <p>5 MR. PLACITELLA: I'm not going to answer</p> <p>6 any questions you put to me, sir.</p> <p>7 Are you done now so I can proceed with</p> <p>8 the deposition?</p> <p>9 MR. FARRELL: Do you have a new question</p> <p>10 for the witness?</p> <p>11 MR. PLACITELLA: Thank you. I appreciate</p> <p>12 you allowing me to ask my questions. Thank you.</p> <p>13 MR. FARRELL: I haven't stopped you from</p> <p>14 asking a single question, Mr. Placitella. I'm just</p> <p>15 wondering whether we are actually going to get to</p> <p>16 something new like you told the Court.</p> <p>17 BY MR. PLACITELLA:</p> <p>18 Q. Okay. Just to be clear, before I move</p> <p>19 on, you don't have a notebook from Mr. Gale</p> <p>20 referenced by Mr. Hemstock in his deposition.</p> <p>21 Correct?</p> <p>22 MR. FARRELL: Objection. Asked and</p>	<p style="text-align: right;">Page 645</p> <p>1 A. Yes.</p> <p>2 Q. It says -- and it says, "At long last,</p> <p>3 here is the data and micrographs of the last three</p> <p>4 sets of asbestos counts."</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Have you found the first three sets of</p> <p>8 asbestos counts?</p> <p>9 MR. FARRELL: Objection to form,</p> <p>10 foundation.</p> <p>11 THE WITNESS: Again, I didn't look at the</p> <p>12 contents of every document in here with the intent of</p> <p>13 knowing what was in them, so, I can't say whether we</p> <p>14 had documents that have the first sets. I don't</p> <p>15 know.</p> <p>16 BY MR. PLACITELLA:</p> <p>17 Q. Can you tell, from looking at this</p> <p>18 document, where the samples that were analyzed were</p> <p>19 taken from?</p> <p>20 MR. FARRELL: Objection to form,</p> <p>21 foundation.</p> <p>22 THE WITNESS: From this document?</p>

1 BY MR. PLACITELLA:
2 Q. Yes.
3 A. No. Once again, I don't know all the
4 documents. I didn't prepare that way. So, there may
5 be other documents that can clarify that.
6 Q. Fair enough.
7 Do you know whether this report refers to
8 samples tested of the mine ore or the production
9 samples?
10 MR. FARRELL: Objection to form and
11 foundation.
12 THE WITNESS: So, again, we may have
13 other documents that would put this in the context.
14 I don't know. I haven't prepared them that way, so I
15 just can't answer.
16 BY MR. PLACITELLA:
17 Q. If, in fact, any of the samples
18 referenced in this document came from the mine versus
19 a production sample, is there any way to tell from
20 this document where in the mine the samples came
21 from?
22 MR. FARRELL: Objection to form and

1 foundation.
2 THE WITNESS: I guess I would have the
3 same answer. I don't know if there are other
4 documents that put this into context.
5 BY MR. PLACITELLA:
6 Q. But as you sit here today, do you -- do
7 you know whether there is a key or a map or something
8 to tell us where these samples came from if they, in
9 fact, came from the mine?
10 MR. FARRELL: Same objections. Beyond
11 the scope.
12 THE WITNESS: I don't know.
13 BY MR. PLACITELLA:
14 Q. And then, lastly, it talks about
15 returning the micrographs. Do you have those?
16 MR. FARRELL: Objection to form.
17 THE WITNESS: I don't know if we found
18 these micrographs. I don't think we have.
19 BY MR. PLACITELLA:
20 Q. Okay. Now, can you go to your -- to
21 Tab 28? Do you have that, see that? That's a
22 document entitled "Talc Meeting 5-17-79," in your

1 P-15.
2 A. Yes.
3 Q. Correct?
4 A. Yes.
5 Q. And can you turn over to the next page,
6 please?
7 Do you see at the very top where it says,
8 "Asbestos fiber is present"?
9 A. Yes, I see that.
10 Q. Okay. Do you know where the report or
11 conclusions are or data that would lead to that
12 conclusion, asbestos fiber is present?
13 MR. FARRELL: Objection to form,
14 foundation, beyond the scope of the notice.
15 THE WITNESS: I -- I don't know what that
16 first bullet means. I -- it says asbestos fiber is
17 present. I don't know what it meant at the time, I
18 don't know what it means now, and I really can't
19 answer that.
20 BY MR. PLACITELLA:
21 Q. Okay. Can we go to your Tab 21? Do you
22 see that?

1 A. Yes.
2 Q. This is a March 23, 1979, memo from
3 Triglia to Hemstock. Correct?
4 A. Yes.
5 Q. And it's entitled "Talc Investigation."
6 Do you see that?
7 A. Yes.
8 Q. It says, "38 rock samples were taken from
9 ten working areas at the Johnson mine. The samples
10 were received on Friday, March 16th, and are now
11 being processed, i.e., crushed, dried, pulverized and
12 split down to a manageable size.
13 "The processed samples will be shipped to
14 Georgia Tech for qualitative transmission electron
15 identification and confirmation of contaminant
16 materials by selected area diffraction analysis."
17 Did I read that correctly?
18 A. Yes.
19 Q. "This work will be given a second order
20 of priority. It is expected the electron diffraction
21 work will be completed in ten days to two weeks after
22 receipt of the samples, and results will be phoned to

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1 us on or about April 10th."

2 Do you see that?

3 A. Yes.

4 Q. Where are the results of those samples
5 that were arrived at on or about April 10th --

6 MR. FARRELL: Objection to form and
7 foundation.

8 BY MR. PLACITELLA:

9 Q. -- of the rock samples?

10 A. I'm sorry. Can I read this again?

11 Q. Yes, sir.

12 (Witness reading over the document.)

13 A. I'd have to look and see. I know we got
14 a lot of information. Again, I didn't prepare for
15 this deposition by memorizing all the contents of the
16 various documents. We got a lot of information from
17 Georgia Tech.

18 Actually, this doesn't say they are
19 looking at rock samples. It says that the materials
20 were crushed and turned into -- made into samples.
21 So, I don't know that they were actually looking at
22 rock samples.

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1 Q. Do you see the first three words that
2 says "38 rock samples"?

3 A. Yes. And then they say, "They are now
4 being processed, i.e., crushed, dried, pulverized and
5 split down to manageable size."

6 Q. They are taking the rocks and they're
7 pulverizing them. Isn't that what they're doing?
8 And then they're doing a test with an electron
9 microscope to see if there is something in there.

10 MR. FARRELL: Objection to form and
11 foundation.

12 THE WITNESS: So, I would think that that
13 may be the results that we got back from Georgia
14 Tech. I would have to look and see how the dates
15 line up. But I haven't memorized it in any way.

16 BY MR. PLACITELLA:

17 Q. I understand that. I'm just trying to
18 figure out where the documents are, and that's why
19 I'm asking these questions. I am not trying to --
20 all right?

21 As you sit here today, have you produced
22 the test results from the 38 rock samples that were

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1 done at Georgia Tech?

2 MR. FARRELL: Objection to form,
3 foundation, beyond the scope of the notice.

4 THE WITNESS: I don't know. As I said,
5 we produced results from Georgia Tech, and I presume
6 that those would be the same ones.

7 BY MR. PLACITELLA:

8 Q. Can you look at that over lunch break and
9 see if they are the same ones?

10 A. If I have time, I will.

11 Q. Then, on the next page --

12 MR. FARRELL: Are you asking me to talk
13 to him about that?

14 MR. PLACITELLA: No. I'm just asking him
15 to look himself, unless you -- the only way he can
16 know it from you, and you can tell him.

17 MR. FARRELL: I'm just trying to clarify
18 what your question is.

19 MR. PLACITELLA: I was asking if he could
20 look and tell me. I didn't ask him to talk to you
21 about it.

22 BY MR. PLACITELLA:

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1 Q. Can you go to the next page, please, on
2 No. 5. It says, "Next in order of priority is the
3 mineralogic characterization of the 38 rock samples
4 taken at the mine. This will involve x-ray analysis
5 from mineral identification in thin section
6 preparation by D.M. Organist Delaware from
7 microscopic analysis to determine contaminant or
8 trace minerals."

9 Do you see that?

10 A. Yes.

11 Q. Have you -- have you produced those
12 results here today?

13 MR. FARRELL: Objection to form and
14 foundation.

15 THE WITNESS: We haven't produced them,
16 and I don't know if it was ever done. It just says
17 it was in priority to be done. I don't know that it
18 was ever done.

19 BY MR. PLACITELLA:

20 Q. How would we find that out?

21 A. We haven't found it, so I don't know that
22 they exist.

<p style="text-align: right;">Page 654</p> <p>1 Q. Well, the only way we'd know is if you 2 had all the documents. Right?</p> <p>3 MR. FARRELL: Objection to form, 4 foundation, and calls for speculation.</p> <p>5 THE WITNESS: I don't know if we would 6 ever know if we had all the documents. I don't know.</p> <p>7 BY MR. PLACITELLA:</p> <p>8 Q. It says it's going to be done, sir. Do 9 you -- have you seen anything that would raise a 10 question in your mind that it was not done?</p> <p>11 MR. FARRELL: Objection to form, 12 foundation.</p> <p>13 THE WITNESS: I haven't seen anything 14 that makes me think it was done, so I don't know.</p> <p>15 BY MR. PLACITELLA:</p> <p>16 Q. Except that it was already put in the 17 business record that it was going to be done. 18 Correct?</p> <p>19 MR. FARRELL: Objection to form, 20 foundation.</p> <p>21 THE WITNESS: That's done often.</p> <p>22 BY MR. PLACITELLA:</p>	<p style="text-align: right;">Page 656</p> <p>1 BY MR. PLACITELLA:</p> <p>2 Q. Have you seen any records concerning the 3 conclusions that were reached as a result of their 4 study?</p> <p>5 MR. FARRELL: Objection to form, 6 foundation, asked and answered.</p> <p>7 THE WITNESS: From that specific study, I 8 don't know that we have their specific conclusions, 9 but we do have information that was prepared by Gale 10 that summarized the talc investigation. We've 11 produced several documents that relate to the 12 conclusions of the talc studies.</p> <p>13 BY MR. PLACITELLA:</p> <p>14 Q. If you have conclusions -- documents that 15 would have conclusions about what was found, would 16 that be significant?</p> <p>17 MR. FARRELL: Objection to form, 18 foundation, calls for speculation.</p> <p>19 THE WITNESS: I'm just not sure what you 20 mean by the question.</p> <p>21 BY MR. PLACITELLA:</p> <p>22 Q. If there were -- if there were documents</p>
<p style="text-align: right;">Page 655</p> <p>1 Q. Okay. Have you identified, in producing 2 documents for today's deposition, any records 3 indicating what parts of the mine were studied 4 specifically by Dr. Hemstock and Dr. Gale during the 5 1978 and 1979 visit?</p> <p>6 MR. FARRELL: Objection to form, 7 foundation.</p> <p>8 THE WITNESS: I -- I don't remember. I 9 don't know.</p> <p>10 BY MR. PLACITELLA:</p> <p>11 Q. Do you have any records as to whether 12 they studied the main ore body or some other area of 13 the mine when they took the samples?</p> <p>14 MR. FARRELL: Same objections.</p> <p>15 THE WITNESS: I don't know.</p> <p>16 BY MR. PLACITELLA:</p> <p>17 Q. Do you have any records indicating what 18 rock type they looked at?</p> <p>19 MR. FARRELL: Same objections.</p> <p>20 THE WITNESS: I'm not sure what you mean 21 by rock type, but I don't know that we have that type 22 of information.</p>	<p style="text-align: right;">Page 657</p> <p>1 with conclusions about exactly what was found, where 2 the testing happened, how much was asbestos, how much 3 wasn't, would that be important?</p> <p>4 MR. FARRELL: Objection to form, 5 foundation, calls for speculation, beyond the scope 6 of the notice, vague as to important as to what.</p> <p>7 THE WITNESS: I don't know. It depends 8 on what the report said.</p> <p>9 BY MR. PLACITELLA:</p> <p>10 Q. Okay. Let me -- I don't -- I want to do 11 this one at a time with the samples. I have one 12 follow-up question for the last time, and then I want 13 to go through each of these samples, if that works 14 for you. Okay?</p> <p>15 A. Yes.</p> <p>16 Q. We identified -- and I'm not sure what 17 exhibit number it is, maybe you could grab it -- the 18 test that was done by RJ Lee from 1993. Do you know 19 what I'm talking about?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. What proof do you have that that 22 sample that was tested by RJ Lee actually came from a</p>

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1 bag of EMTAL talc?
2 MR. FARRELL: Objection to form.
3 THE WITNESS: As part of a chain of
4 custody, we have a letter from Cahill to RJ Lee
5 stating where the samples originated, how they were
6 put in the bags.
7 BY MR. PLACITELLA:
8 Q. Well, I didn't -- I understand you said
9 that, but how do we know the sample that Cahill had
10 actually came from a bag of EMTAL talc?
11 MR. FARRELL: Objection to form.
12 BY MR. PLACITELLA:
13 Q. I didn't see anything that told us that.
14 MR. FARRELL: Objection to form,
15 foundation.
16 THE WITNESS: I would have to look at the
17 letter, but I believe it said it came from an EMTAL
18 bag.
19 BY MR. PLACITELLA:
20 Q. Who took that sample? I didn't see
21 where -- where did the bag come from?
22 A. I don't know that.

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1 Q. I'm trying to understand what proof we
2 have that what was sampled was actually a bag of
3 EMTAL talc versus something else. What's the proof?
4 MR. FARRELL: Objection to form.
5 THE WITNESS: The proof we have is that,
6 when Cahill sent it to RJ Lee, they stated it was
7 from an EMTAL bag.
8 BY MR. PLACITELLA:
9 Q. But how does Cahill prove that? I mean,
10 that's that I am trying to understand. How does
11 it -- what's the proof that it was from an EMTAL bag?
12 MR. FARRELL: Objection to form,
13 foundation.
14 THE WITNESS: I guess I couldn't -- if
15 somebody said -- in one of these depositions,
16 somebody said they pulled a rock from the mine, I
17 couldn't prove that they did other than to believe
18 what they said.
19 BY MR. PLACITELLA:
20 Q. Well, who pulled the talc from the bag?
21 Where did the bag come from? That's what I'm trying
22 to understand.

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1 MR. FARRELL: Objection to form.
2 THE WITNESS: Well, this happened about
3 15 years ago, but it was sent by a Michael Sullivan
4 at Cahill to RJ Lee.
5 BY MR. PLACITELLA:
6 Q. So, did he pull the talc from the bag?
7 MR. FARRELL: Objection to form.
8 THE WITNESS: I don't know. We may have
9 more information. I don't know the details of how it
10 was pulled. People may know that. I don't know
11 that.
12 BY MR. PLACITELLA:
13 Q. How do I find that out? I'm here to ask
14 you about that today.
15 A. I can ask counsel.
16 Q. Okay. That one, I'll allow you to ask
17 him at lunchtime. How's that?
18 What's the next -- pick any other sample.
19 We're going to go through them all.
20 MR. FARRELL: Do you want me to discuss
21 that with him on the lunch break?
22 MR. PLACITELLA: You can tell him, if you

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1 know, that specific issue, or you can tell us now.
2 Whatever you want.
3 MR. FARRELL: He's here to answer your
4 questions. Do you have a question?
5 MR. PLACITELLA: That's part of the
6 issue.
7 MR. FARRELL: He's responded to your
8 question. What's your next question?
9 BY MR. PLACITELLA:
10 Q. All right. So, as we sit here today, you
11 don't have any actual proof that the sample that was
12 sent by Michael Sullivan was taken from an EMTAL bag.
13 Correct?
14 MR. FARRELL: Objection to form,
15 foundation, misstates Mr. Steinmetz's testimony.
16 THE WITNESS: From a legal perspective, I
17 don't know what you mean by "actual proof."
18 BY MR. PLACITELLA:
19 Q. Well, you don't know who took the sample
20 out of the bag.
21 A. We have a --
22 MR. FARRELL: Objection. Objection to

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1 form, foundation, harassing the witness.

2 THE WITNESS: We have a statement that
3 says that a sample was taken from an EMTAL bag.
4 BY MR. PLACITELLA:

5 Q. But we don't know who took the sample and
6 when. Correct?

7 MR. FARRELL: Same objections, asked and
8 answered.

9 THE WITNESS: With respect to chain of
10 custody, it's not necessary to identify exactly who
11 pulled the sample and -- and the details of how it
12 was transferred. The important part is to identify
13 the sample.

14 BY MR. PLACITELLA:

15 Q. So, it's not important to figure out
16 whether they actually took the sample from a bag of
17 EMTAL talc and what the proof of that is? That's
18 your testimony?

19 MR. FARRELL: Objection to form,
20 argumentative.

21 THE WITNESS: I believe them.

22 BY MR. PLACITELLA:

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1 Q. You believe who?

2 A. The statement from Cahill that it was
3 taken from EMTAL.

4 Q. And you don't know what Cahill's
5 information is, and you never asked where it came
6 from. Correct?

7 MR. FARRELL: Objection to form.

8 THE WITNESS: Correct.

9 BY MR. PLACITELLA:

10 Q. Okay. Take any other sample in order
11 that's over there, and we'll just identify them and
12 go through them. Pick the next one until we are all
13 done.

14 A. Well, the first sample, the first --

15 MR. FARRELL: I don't want to -- you can
16 do this however you want to do it, but do you want to
17 take five minutes? We have been going for an hour.
18 He can bring the samples over, just walk through
19 them. It may be faster.

20 MR. PLACITELLA: That's fine. That's
21 fine. We can do it that way.

22 THE VIDEOGRAPHER: The time is now

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1 12:03 p.m. We're going off the record.

2 (Recess taken.)

3 THE VIDEOGRAPHER: The time is now
4 12:13 p.m. We're back on the record.

5 BY MR. PLACITELLA:

6 Q. Before I turn to the samples, you had
7 pointed before to a tab in P-15 that you said had the
8 results of the study that Gale and Hemstock did of
9 the mine. Can you show me what -- tell me what tab
10 that was?

11 A. No. I think it was P-50 of the Hemstock.

12 Q. P-50?

13 A. Yes.

14 Q. Okay. Are you sure it was P-50? I just
15 want to make sure we are on the same -- the P-50 I
16 have as -- I'm not going to spend time on it now.
17 I'll look at it later -- the P-50 I have as a
18 March 23, 1979, memo from Triglia to Hemstock. Is
19 that what you're talking about?

20 A. No. I'm talking about an April 11 --

21 MR. FARRELL: I think there's multiple
22 documents behind that tab.

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1 THE WITNESS: -- memorandum. It is at
2 the back of the tab. It's an April 11, 1979,
3 memorandum from Gale to Triglia, "Talc Investigation
4 Review and Update." It's at the very back.

5 BY MR. PLACITELLA:

6 Q. Okay. So, we're on the same page.

7 A. I'm not sure if I said it was a summary
8 of the mine study. I said it was a summary of the
9 talc studies that Gale had been working on.

10 Q. Well, I'll --

11 A. An update of the studies.

12 Q. I'll look at it over -- so we don't spend
13 time now.

14 All right. What is the next -- which one
15 do you want to do first?

16 A. So, the first one in front of me is a
17 pair of samples that came from what used to be
18 McCrone, it's now McCrone Institute, being handled
19 through a derivative of that company, Microtrace.

20 Q. Okay.

21 A. And these are two samples that were
22 originally submitted to McCrone in 1973 as part of

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<p>1 McCrone Project MA 3360.</p> <p>2 Q. Okay. And they came from where to</p> <p>3 McCrone?</p> <p>4 A. They were sent from Engelhard in 1973 to</p> <p>5 McCrone. They were samples from the Johnson mine.</p> <p>6 Q. Are they samples from the mine or from</p> <p>7 the production after the talc was processed?</p> <p>8 MR. FARRELL: Objection to form,</p> <p>9 foundation.</p> <p>10 You can answer the question if you can.</p> <p>11 Don't the production -- doesn't the</p> <p>12 production talc come from the mine?</p> <p>13 MR. PLACITELLA: I'm asking for specific</p> <p>14 reasons.</p> <p>15 MR. FARRELL: Okay.</p> <p>16 THE WITNESS: There were samples of EMTAL</p> <p>17 42 and EMTAL 500.</p> <p>18 BY MR. PLACITELLA:</p> <p>19 Q. Okay. And do you know what part of the</p> <p>20 mine those -- the ore came from that was used for --</p> <p>21 for those samples?</p> <p>22 A. I don't know. These are 40 years old. I</p>	<p>1 THE WITNESS: I don't know. I'm not a</p> <p>2 geologist.</p> <p>3 BY MR. PLACITELLA:</p> <p>4 Q. Do you know what the criterion was for</p> <p>5 selecting those samples?</p> <p>6 A. They wanted samples of M 42 and M 500.</p> <p>7 Q. Do you know what kind of rock those</p> <p>8 samples came from at the mine?</p> <p>9 A. It would have been from the talc in the</p> <p>10 mine. I don't know.</p> <p>11 Q. But you don't know whether it was</p> <p>12 chlorate rock or serpentine rock or anything else?</p> <p>13 A. I'm not a geologist.</p> <p>14 Q. How would we find that out?</p> <p>15 MR. FARRELL: Objection to form. Calls</p> <p>16 for speculation.</p> <p>17 THE WITNESS: I don't know.</p> <p>18 BY MR. PLACITELLA:</p> <p>19 Q. When were the samples taken?</p> <p>20 A. Well, they would have been taken on or</p> <p>21 around 1973.</p> <p>22 Q. How do we know that for sure?</p>
Page 667	Page 669
<p>1 don't know.</p> <p>2 Q. Who would know that? Who could we ask?</p> <p>3 MR. FARRELL: Objection to form, calls</p> <p>4 for speculation.</p> <p>5 THE WITNESS: I don't know that anybody</p> <p>6 knows.</p> <p>7 BY MR. PLACITELLA:</p> <p>8 Q. Do we know what level of the mine it was</p> <p>9 taken from?</p> <p>10 MR. FARRELL: Objection to form.</p> <p>11 THE WITNESS: It would be speculation for</p> <p>12 me to say.</p> <p>13 BY MR. PLACITELLA:</p> <p>14 Q. You understood that the Johnson EMTAL</p> <p>15 mine had different levels?</p> <p>16 A. Yes.</p> <p>17 Q. And you understand that you could find a</p> <p>18 constituent in one level and not another one, it's</p> <p>19 possible?</p> <p>20 MR. FARRELL: Objection to form,</p> <p>21 foundation, beyond the scope of the notice. I don't</p> <p>22 think he's an expert in geology.</p>	<p>1 MR. FARRELL: Objection to form.</p> <p>2 BY MR. PLACITELLA:</p> <p>3 Q. How do we know it's not a bag that was</p> <p>4 sitting there for three years?</p> <p>5 MR. FARRELL: Objection to form, calls</p> <p>6 for speculation.</p> <p>7 THE WITNESS: I don't know.</p> <p>8 BY MR. PLACITELLA:</p> <p>9 Q. Who took the samples?</p> <p>10 A. They were taken by somebody at Engelhard</p> <p>11 at the time and submitted to McCrone.</p> <p>12 Q. Who was that?</p> <p>13 A. I don't know.</p> <p>14 Q. Is there a chain of custody from</p> <p>15 Engelhard to McCrone telling us where the samples</p> <p>16 came from and -- to McCrone?</p> <p>17 MR. FARRELL: Objection to form.</p> <p>18 THE WITNESS: Again, chain of custody</p> <p>19 typically starts with sending the sample out to</p> <p>20 the -- out to whoever is doing the work. We have a</p> <p>21 letter from -- we have various documents from</p> <p>22 Engelhard stating that they're sending the</p>

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<p>1 information to McCrone, and McCrone received it. And</p> <p>2 then McCrone reported back subsequently on the</p> <p>3 results of their studies.</p> <p>4 BY MR. PLACITELLA:</p> <p>5 Q. But who took the samples?</p> <p>6 A. Somebody at Engelhard.</p> <p>7 Q. We don't know?</p> <p>8 MR. FARRELL: Objection to form.</p> <p>9 Harassing the witness.</p> <p>10 THE WITNESS: That's right. I don't</p> <p>11 know.</p> <p>12 BY MR. PLACITELLA:</p> <p>13 Q. Is there any documentation that could</p> <p>14 tell us that?</p> <p>15 MR. FARRELL: Objection to form, asked</p> <p>16 and answered.</p> <p>17 THE WITNESS: I don't know. I don't know</p> <p>18 if any was ever made.</p> <p>19 BY MR. PLACITELLA:</p> <p>20 Q. If there was a notebook that told us that</p> <p>21 that no longer exists, that would be important</p> <p>22 evidence, don't you think?</p>	<p>1 package.</p> <p>2 MR. PLACITELLA: Can we give it the next</p> <p>3 exhibit number?</p> <p>4 MR. FARRELL: These are the original</p> <p>5 samples, so they have been read into the record as</p> <p>6 part of the document inspection.</p> <p>7 MR. PLACITELLA: So, can we mark them</p> <p>8 just so we know what we are dealing with? Is there a</p> <p>9 problem with marking the bag with the exhibit number?</p> <p>10 MR. FARRELL: Microtrace is going to want</p> <p>11 them back is the issue. So, it's up to you.</p> <p>12 MR. PLACITELLA: We'll have to deal with</p> <p>13 that with the judge. Why don't we mark them anyhow.</p> <p>14 What's the next exhibit number?</p> <p>15 THE REPORTER: 36.</p> <p>16 MR. PLACITELLA: Can we put a little 36</p> <p>17 on there, please?</p> <p>18 THE WITNESS: Along with these two</p> <p>19 samples, by the way, are two samples of the same</p> <p>20 material that was used by Micky Gunter to do a</p> <p>21 subsequent analysis of the same material.</p> <p>22 MR. PLACITELLA: All right. So, we'll</p>
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<p>1 MR. FARRELL: Objection to form,</p> <p>2 foundation, calls for speculation.</p> <p>3 THE WITNESS: I don't know.</p> <p>4 BY MR. PLACITELLA:</p> <p>5 Q. Okay. Can you give me -- can you go to</p> <p>6 the next set of samples, please?</p> <p>7 Were they marked, those samples, by the</p> <p>8 way?</p> <p>9 A. Yes, they were marked. There is a strong</p> <p>10 chain of custody for what happened to them.</p> <p>11 Q. I mean marked for this deposition.</p> <p>12 MR. FARRELL: I think that -- I think</p> <p>13 that Jared either marked them or read them in at the</p> <p>14 inspection.</p> <p>15 MR. PLACITELLA: I just want to make</p> <p>16 sure, when we are going back, we have -- so, can we</p> <p>17 give them a mark if there -- is there any marking on</p> <p>18 them?</p> <p>19 THE WITNESS: There are markings, but --</p> <p>20 BY MR. PLACITELLA:</p> <p>21 Q. An exhibit number?</p> <p>22 A. -- but no exhibit number, at least on the</p>	<p>1 call it -- what was that number again?</p> <p>2 THE REPORTER: 36.</p> <p>3 MR. PLACITELLA: 36A and B. B will be</p> <p>4 the Gunter.</p> <p>5 THE WITNESS: Sure.</p> <p>6 (Plaintiff's Exhibit Nos. 36A and</p> <p>7 36B, pair of rock samples taken</p> <p>8 from the Johnson mine of EMTAL 42</p> <p>9 and EMTAL 500, submitted to</p> <p>10 McCrone from Engelhard in 1973,</p> <p>11 were marked for identification.)</p> <p>12 BY MR. PLACITELLA:</p> <p>13 Q. Okay. What is the next one you've got?</p> <p>14 A. The next set of samples are three</p> <p>15 sample -- rock samples obtained from Ed Lomas, who</p> <p>16 worked at the mine in the late '70s and early '80s.</p> <p>17 MR. PLACITELLA: Okay. Can we just mark</p> <p>18 those, what, 37?</p> <p>19 THE WITNESS: Yes. These are A, B, and</p> <p>20 C. And along with those, we also have three ground</p> <p>21 samples taken from those that are currently under the</p> <p>22 chain of custody of Mickey Gunter.</p>

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<p>1 MR. PLACITELLA: All right. So, let's</p> <p>2 do -- what was that number?</p> <p>3 THE REPORTER: The next would be 37.</p> <p>4 MR. PLACITELLA: So, let's do 37A through</p> <p>5 whatever, and just -- so we all know what we are</p> <p>6 dealing with.</p> <p>7 (Plaintiff's Exhibit Nos. 37A,</p> <p>8 37B, 37C, three talc rock samples</p> <p>9 obtained from Ed Lomas at Johnson</p> <p>10 mine in the late '70s and early</p> <p>11 '80s, were marked for</p> <p>12 identification.)</p> <p>13 (Plaintiff's Exhibit Nos. 37D,</p> <p>14 37E, and 37F, three powder</p> <p>15 samples currently under the</p> <p>16 custody of Micky Gunter, were</p> <p>17 marked for identification.)</p> <p>18 BY MR. PLACITELLA:</p> <p>19 Q. So, how many --</p> <p>20 A. So, there are three rock samples and then</p> <p>21 three ground samples.</p> <p>22 Q. So, A, B, C, D, E, and F. 37A, B, C, D,</p>	<p>1 information, and he did have these rock samples.</p> <p>2 Q. And where did he have them?</p> <p>3 A. Somewhere in his house. I don't know</p> <p>4 where specifically.</p> <p>5 Q. Okay. Do you know for how long he had</p> <p>6 those samples?</p> <p>7 A. Well, these were obtained fairly</p> <p>8 recently, so he would have had them since from --</p> <p>9 either from 1976 through 1983 sometime.</p> <p>10 Q. Is it your understanding these are</p> <p>11 samples of rock that was taken from the mine?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Do you know where in the mine they</p> <p>14 were taken from?</p> <p>15 A. From either Levels 4 or 5.</p> <p>16 Q. Okay. And how do you know that?</p> <p>17 A. He wrote a declaration regarding the</p> <p>18 origin of the samples and how he had taken them.</p> <p>19 Q. How would we know whether it was 4 or 5?</p> <p>20 A. He said that in his declaration.</p> <p>21 Q. Right, but -- so, he couldn't be more</p> <p>22 specific? He said it was either 4 or 5?</p>
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<p>1 E, and F.</p> <p>2 BY MR. PLACITELLA:</p> <p>3 Q. So, why don't you just identify them by</p> <p>4 exhibit number, specifically what you have.</p> <p>5 A. So, Exhibit 37A is a talc rock sample</p> <p>6 obtained from Ed Lomas. And he designated that</p> <p>7 Talc A.</p> <p>8 37B is another rock sample obtained from</p> <p>9 Lomas, and he designated that as Talc B.</p> <p>10 And then No. 37C is a third rock sample</p> <p>11 obtained from Lomas that he identified as Talc C.</p> <p>12 37D is a powder sample obtained from</p> <p>13 Micky Gunter, and that is a powder sample of Talc A,</p> <p>14 which is 37A.</p> <p>15 37E is the powder sample of Talc D, which</p> <p>16 was 37B.</p> <p>17 And then 37F is the powder sample of</p> <p>18 Talc C, which was 37C.</p> <p>19 Q. Okay. Thank you.</p> <p>20 Do you know the circumstances under which</p> <p>21 samples were provided by Mr. Lomas?</p> <p>22 A. He was contacted and asked if he had</p>	<p>1 A. That's what he said, yes.</p> <p>2 Q. Okay. And do you know what part of the</p> <p>3 ore body he took it from?</p> <p>4 A. I don't know. He may have said in the</p> <p>5 declaration, but I don't know that.</p> <p>6 Q. Did he take it from the main ore body?</p> <p>7 A. I'd have to read the declaration again.</p> <p>8 I'm not sure.</p> <p>9 Q. All right. Do you -- do you know what</p> <p>10 criteria there was for taking those samples?</p> <p>11 A. I think he wanted to take samples as a</p> <p>12 memento of his work there, I think.</p> <p>13 Q. We don't know what part of the mine in</p> <p>14 Levels 4 or 5, they came from. Is that fair?</p> <p>15 A. I don't think we know specifically.</p> <p>16 Q. And we don't know exactly when they were</p> <p>17 taken. Correct?</p> <p>18 A. Correct. We know between '76 and '83.</p> <p>19 MR. FARRELL: I don't mean to interrupt,</p> <p>20 but I think you may have misspoken about which</p> <p>21 levels.</p> <p>22 I just wanted to raise the issue for you,</p>

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1 Mr. Placitella.
2 MR. PLACITELLA: Okay.
3 BY MR. PLACITELLA:
4 Q. Did you say something wrong?
5 A. I don't know.
6 MR. FARRELL: You were saying 4 and 5.
7 I'm not sure if that was 4 or 5.
8 THE WITNESS: It may be 4 and 5, I'm not
9 sure, or 5 and 6. I don't know.
10 BY MR. PLACITELLA:
11 Q. So, you don't know?
12 MR. FARRELL: It is in the declaration.
13 THE WITNESS: It's in the declaration. I
14 think it is 5 and 6, or 5 or 6, one of the two.
15 BY MR. PLACITELLA:
16 Q. What part of 5 and 6?
17 A. I don't know.
18 Q. Was it from the wall, from the main ore
19 body? Where?
20 A. I don't know.
21 Q. Was it from the part of the mine where
22 they produced the product or from the side wall,

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1 what? Do you know?
2 A. I don't know.
3 Q. Who would know?
4 A. Lomas might know.
5 Q. Is that in his declaration, exactly where
6 in the mine it was taken from?
7 A. I'd have to read it again.
8 MR. PLACITELLA: Do I have that?
9 MR. FARRELL: I believe so. I'm getting
10 a copy now.
11 MR. PLACITELLA: I'll look at it over
12 lunchtime so we don't waste a lot of time here.
13 BY MR. PLACITELLA:
14 Q. What other samples do you have?
15 A. We have the samples that we have already
16 discussed, the three samples from the EMTAL bag that
17 Cahill sent to RJ Lee for analysis in 1993.
18 And then along with those, we have ground
19 samples of those, or powder samples, that were
20 obtained from Micky Gunter as part of his analysis.
21 Q. From the RJ Lee samples from 1993?
22 A. Yes.

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1 Q. Okay. So, any questions I would have
2 asked you about the RJ Lee samples would apply to the
3 samples from -- that Gunter did his analysis. Is
4 that fair?
5 MR. FARRELL: Objection to form.
6 THE WITNESS: I would think so.
7 BY MR. PLACITELLA:
8 Q. So, we have three sets of samples as we
9 sit here today with derivatives. Correct? We have
10 the RJ Lee samples from 1993, allegedly. Correct?
11 A. From 1993, yes.
12 Q. Okay. We have samples from McCrone from
13 '72-'73?
14 A. Yes.
15 Q. Okay. And we have the Lomas samples.
16 Correct?
17 A. Yes.
18 Q. That's it?
19 MR. FARRELL: Objection to form.
20 Misstates the record.
21 THE WITNESS: Those are the ones with --
22 as you mentioned, derivatives. By that, I think you

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1 meant the powder.
2 BY MR. PLACITELLA:
3 Q. Correct.
4 A. But we have other samples.
5 Q. In addition to the ones we just
6 identified?
7 A. Yes.
8 Q. What else?
9 A. We have a sample from Micky Gunter that
10 he obtained in his investigations. This is a talc
11 sample --
12 Q. Can we just mark that, please, so we are
13 all talking about the same thing? What's in your
14 hand, we want to mark it.
15 The next exhibit, please.
16 A. Sure. Yes.
17 (Plaintiff's Exhibit No. 38, talc
18 rock sample obtained by Micky
19 Gunter from Leslie White, was
20 marked for identification.)
21 MR. FARRELL: Mr. Placitella, this is the
22 Lomas declaration that Mr. Steinmetz referenced.

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<p>1 MR. PLACITELLA: I'll look at it over a 2 break. 3 MR. FARRELL: I didn't want -- 4 MR. PLACITELLA: I'm not fighting with 5 you. I'll look it over. 6 MR. FARRELL: I didn't want you to leave 7 and to then say -- 8 MR. PLACITELLA: It is whatever it is. 9 MR. FARRELL: All right. 10 BY MR. PLACITELLA: 11 Q. Okay. Do you have a number on that now? 12 A. Yes, it is P-38. 13 Q. And what is that? 14 A. This is a rock sample that Micky Gunter 15 obtained from Leslie White, who lived in the Johnson 16 area, who had obtained a -- who says she had obtained 17 this rock sample. 18 Q. When was this sample obtained? 19 A. This would have been obtained in 2012. 20 Q. And who is Leslie White? 21 A. She is a person who lived in the area of 22 the Johnson mine, and she obtained a rock sample from</p>	<p>1 name. I don't know it. 2 BY MR. PLACITELLA: 3 Q. And when did he work there? 4 A. I don't know. 5 Q. Where did he get it from? 6 A. I don't know who he is, so I don't know. 7 Q. What part of the mine? 8 A. I don't know. 9 Q. What level of the mine? 10 A. I don't know who he is, so, I don't know. 11 Q. What part of the rock? 12 A. I don't know. 13 Q. How are we going to rely on this sample 14 means anything? 15 MR. FARRELL: Objection to form, 16 foundation, argumentative. 17 THE WITNESS: I don't know if we can rely 18 on it. I'm just saying this is a sample that we 19 have. 20 BY MR. PLACITELLA: 21 Q. Okay. And do we know whether it came 22 from the mine ore -- main ore body or the</p>
Page 683	Page 685
<p>1 somebody who worked there, apparently. 2 Q. Who currently works there, you say? 3 A. Who worked there at the time. 4 Q. So, Leslie got it from somebody else. 5 Who did she get it from? 6 A. I don't know. 7 Q. Do we know? 8 A. Micky Gunter may know. I don't know. 9 Q. We don't have a name? 10 MR. FARRELL: Objection to form. 11 THE WITNESS: We have the name Leslie 12 White. That's it. 13 BY MR. PLACITELLA: 14 Q. So, Micky Gunter got it from Leslie, who 15 got it from somebody else. So, we don't have his 16 name. 17 MR. FARRELL: Objection to form -- 18 BY MR. PLACITELLA: 19 Q. Is that fair? 20 MR. FARRELL: Objection to form and 21 foundation. 22 THE WITNESS: We may have the person's</p>	<p>1 outcroppings, or it was just sitting outside the 2 mine? 3 MR. FARRELL: Objection to form. 4 THE WITNESS: I don't know. 5 BY MR. PLACITELLA: 6 Q. Who would know? 7 MR. FARRELL: Objection to form. 8 THE WITNESS: Who would know what? 9 BY MR. PLACITELLA: 10 Q. Where the sample came from, who took it 11 out, when it was taken. 12 A. I don't know that anybody knows that. 13 Micky Gunter might know somebody who knows it, having 14 talked to Leslie White, but I don't know if anybody 15 knows it. 16 Q. As part of your investigation, did you 17 ask Micky Gunter any of those questions? 18 A. No. 19 Q. So, we don't know what Micky Gunter might 20 know. 21 MR. FARRELL: Objection to form and 22 foundation.</p>

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<p>1 THE WITNESS: We might know from his 2 testimony. I don't know. 3 BY MR. PLACITELLA: 4 Q. Is there testimony about this rock that I 5 don't know about, that he got from Leslie, who got it 6 from somebody else who worked there? 7 MR. FARRELL: Objection to form. 8 THE WITNESS: I believe there might be, 9 but I don't -- I haven't seen any. 10 BY MR. PLACITELLA: 11 Q. Okay. Do you have any other samples? 12 A. One other sample. This is also from 13 Micky Gunter, and this is a sample that he obtained 14 from the University of Vermont. He had contacts at 15 the University of Vermont, having been -- or having 16 had some type of appointment there. And he was given 17 a sample that was purportedly from the Johnson mine. 18 MR. PLACITELLA: Okay. And can we mark 19 that, please? 20 (Plaintiff's Exhibit No. 39, 21 rock sample reportedly taken from 22 the Johnson mine obtained by</p>	<p>1 BY MR. PLACITELLA: 2 Q. Do you know? 3 A. I don't know. I don't know. 4 Q. Okay. And do you know who at the 5 university obtained that sample and how they got it? 6 A. I don't know. 7 Q. Who would know? 8 A. Micky Gunter may know. I don't know. 9 Q. Did you ask Micky Gunter, knowing that we 10 had to attempt to figure out chain of custody as we 11 were sitting here? 12 MR. FARRELL: Objection to form, 13 argumentative. 14 THE WITNESS: No. 15 BY MR. PLACITELLA: 16 Q. Do you know when it was taken from the 17 mine? 18 A. No. 19 Q. Do we know where it was taken from the 20 mine? 21 A. I don't know if we do. I don't. 22 Q. Does BASF know?</p>
Page 687	Page 689
<p>1 Micky Gunter from University of 2 Vermont, was marked for 3 identification.) 4 BY MR. PLACITELLA: 5 Q. What's the number? 6 A. 39. 7 Q. What's your source of information as to 8 where Micky Gunter got this from? 9 MR. FARRELL: Objection to form. 10 THE WITNESS: From where he got it, my 11 source is counsel, who spoke with him. 12 BY MR. PLACITELLA: 13 Q. You didn't speak to him yourself? 14 A. Correct. 15 Q. And do you know when he obtained the 16 sample? 17 A. The beginning of the chain of custody is 18 4-17-2012. 19 Q. Okay. And do we -- is that the only 20 sample that the University has? 21 MR. FARRELL: Objection to form, 22 foundation, beyond the scope.</p>	<p>1 A. I don't know. 2 Q. Do we know who extracted it from the 3 mine? 4 A. I don't know. 5 Q. Do we know if it actually came from the 6 mine? 7 MR. FARRELL: Objection to form. 8 THE WITNESS: I can only rely on what 9 Micky Gunter has -- has said. I don't -- I didn't 10 personally take it, so, I don't know anything more 11 than that, except that he says that he got it from 12 somebody who said it came from the Johnson mine. 13 BY MR. PLACITELLA: 14 Q. Do we know what the criteria was for 15 obtaining that sample? 16 MR. FARRELL: Objection to form. 17 THE WITNESS: I don't know. 18 BY MR. PLACITELLA: 19 Q. Do we know whether it came from the main 20 ore body? 21 A. I don't know. 22 Q. Do we know whether it came from the part</p>

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<p>1 of the mine that was used to produce EMTAL talc?</p> <p>2 MR. FARRELL: Objection to form,</p> <p>3 foundation, beyond the scope.</p> <p>4 THE WITNESS: I don't know.</p> <p>5 BY MR. PLACITELLA:</p> <p>6 Q. Do we know what kind of rock it came</p> <p>7 from?</p> <p>8 MR. FARRELL: Objection to form and</p> <p>9 foundation.</p> <p>10 THE WITNESS: I don't know. I'm not a</p> <p>11 geologist.</p> <p>12 BY MR. PLACITELLA:</p> <p>13 Q. Okay. Do you know whether Gunter</p> <p>14 obtained a chain of custody from the University</p> <p>15 providing any of that information?</p> <p>16 A. I don't know.</p> <p>17 Q. Do you have any other samples?</p> <p>18 A. That is all.</p> <p>19 MR. PLACITELLA: Okay. Is this a good</p> <p>20 time for a lunch break or do you want to keep going?</p> <p>21 MR. FARRELL: We can take lunch now.</p> <p>22 Are you done with the samples? Are you</p>	<p>1 MR. FARRELL: There are plenty of places</p> <p>2 to eat. I'm sure you'll find one.</p> <p>3 Are we off the record?</p> <p>4 MR. PLACITELLA: Thank you so much for</p> <p>5 helping me.</p> <p>6 THE VIDEOGRAPHER: The time is 12:41 p.m.</p> <p>7 We are going off the record.</p> <p>8 (Recess taken.)</p> <p>9 THE VIDEOGRAPHER: Stand by, please.</p> <p>10 The time is now 1:38 p.m. We are back on</p> <p>11 the record.</p> <p>12 (Plaintiff's Exhibit No. 40,</p> <p>13 Declaration of Edward Lomas dated</p> <p>14 April 4, 2013, was</p> <p>15 marked for identification.)</p> <p>16 (Plaintiff's Exhibit No. 41,</p> <p>17 transcript of videotape</p> <p>18 deposition of William Grassley</p> <p>19 taken on June 17, 2014, was</p> <p>20 marked for identification.)</p> <p>21 (Plaintiff's Exhibit No. 42,</p> <p>22 document entitled Stipulation and</p>
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<p>1 moving to something different?</p> <p>2 MR. PLACITELLA: I think I'm done. I'll</p> <p>3 have to go back and look, but I think I'm done.</p> <p>4 I want to read Lomas' declaration to see</p> <p>5 if I have any questions about it.</p> <p>6 MR. FARRELL: Well, his declaration is</p> <p>7 like ten lines of text.</p> <p>8 MR. PLACITELLA: I know, but I'm very,</p> <p>9 very slow, as you know. It takes me a while to do</p> <p>10 things. So, I'll do it over the break.</p> <p>11 MR. FARRELL: I have noticed that.</p> <p>12 MR. PLACITELLA: Yeah, it's a problem</p> <p>13 but, you know...</p> <p>14 I'll do it over lunch so we don't waste</p> <p>15 anybody's time.</p> <p>16 So, if you want to take a break now, it's</p> <p>17 fine.</p> <p>18 THE WITNESS: Sure.</p> <p>19 MR. PLACITELLA: Tell me a good place to</p> <p>20 go that's quick so we can keep going as fast as you</p> <p>21 can, or are you just going to turn me out into</p> <p>22 Washington, D.C., and try to figure it out?</p>	<p>1 Order of Confidentiality, Bates</p> <p>2 stamped</p> <p>3 BASF_SAMPSON000025203-2509, was</p> <p>4 marked for identification.)</p> <p>5 BY MR. PLACITELLA:</p> <p>6 Q. Good afternoon.</p> <p>7 A. Hi.</p> <p>8 Q. This morning, you recall we went over the</p> <p>9 documents concerning the study that was done by</p> <p>10 Dr. Hemstock and Mr. Gale up at the mine. We went</p> <p>11 over the documents that were missing in the Triglia</p> <p>12 transcript. Do you recall that?</p> <p>13 A. Yes.</p> <p>14 MR. FARRELL: Objection to form.</p> <p>15 BY MR. PLACITELLA:</p> <p>16 Q. And do you recall you said that that</p> <p>17 didn't matter that much because the results were in</p> <p>18 Exhibit 50 to the Hemstock deposition.</p> <p>19 Do you recall that?</p> <p>20 MR. FARRELL: Objection to form,</p> <p>21 foundation, misstates his testimony.</p> <p>22 THE WITNESS: I'm not sure that's what I</p>

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1 said. What -- I didn't say it didn't matter. What I
2 said was that a lot of the information in a summary
3 of that talc that Gale and Hemstock were doing was
4 available in that document.

5 BY MR. PLACITELLA:

6 Q. In Exhibit 50?

7 MR. FARRELL: Objection to form,
8 foundation, misstates his testimony.

9 THE WITNESS: As part of Exhibit 50.

10 BY MR. PLACITELLA:

11 Q. And you specifically referred me to this
12 report from Gale, right before we broke, of April 11,
13 1979, from Gale to Triglia. Do you see that?

14 A. Yes.

15 Q. Okay. And I just want to go through that
16 with you to see if perhaps you were mistaken.

17 It starts --

18 MR. FARRELL: I'm sorry, Chris. Just so
19 I understand what you are going back to, are you
20 talking about the Waterbury Talc Inlet document or --

21 MR. PLACITELLA: No. I'm talking about
22 the document he referred me to, which was Tab 50 to

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1 the Hemstock transcript, Bates No. 13154, which is
2 what he pointed to me.

3 MR. FARRELL: This is on the 38 samples
4 question?

5 MR. PLACITELLA: Yes, sir.

6 BY MR. PLACITELLA:

7 Q. So, do you have that in front of you?

8 A. I have it in front of me, yes.

9 Q. Do you have the April 11, 1979, memo from
10 Gale to Triglia?

11 A. Yes.

12 Q. All right. Do you see where it starts
13 out, "The following is a review and update on the
14 talc investigation which was initiated in
15 February 1979. The investigation itself concerns the
16 identification of contaminants in a number of talc
17 production samples using transmission electron
18 microscopy."

19 Do you see that?

20 A. Yes.

21 Q. It doesn't talk about mine ore samples.
22 Correct?

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1 MR. FARRELL: Objection to form,
2 foundation.

3 THE WITNESS: No. I think I mentioned
4 this in -- with respect to the fact that we were
5 talking about samples being taken, sent to Georgia
6 Tech. And I mentioned that updates were being
7 provided. I didn't say that the documents that we
8 haven't found weren't important. I was just saying
9 that they were providing updates on this information.
10 So, I'm not surprised it is not there.

11 BY MR. PLACITELLA:

12 Q. Right. And then, if you look down here,
13 I highlighted again, they are talking production
14 samples. Do you see on the second page?

15 A. Yes.

16 Q. And then a little further down it talks
17 about production samples. Do you see that?

18 A. Yes.

19 Q. And then, if you look at the Table 1,
20 which I guess is the actual results, do you see that?

21 A. Yes.

22 Q. Okay. It says, "Data on talc production

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1 samples from transmission electron microscopy
2 examinations done at Georgia Institute."

3 Do you see that?

4 A. Yes.

5 Q. Okay. So, for example, when they are
6 looking at EMTAL 42 -- by the way, how big is like a
7 milligram, do you know?

8 MR. FARRELL: Objection to foundation.

9 BY MR. PLACITELLA:

10 Q. Small? Smaller than a -- is a milligram
11 bigger or smaller than this cap?

12 A. It depends on the density and the -- and
13 the weight of the material and everything, the
14 density and the specific gravity of the material.

15 Q. Okay. Is it a reasonable approximation?

16 A. No.

17 Q. Should it be smaller or larger?

18 A. I don't know what the information is for
19 talc, so I don't know the answer.

20 Q. Okay. Do you see where it says, "Number
21 of fibers calculated per milligram of sample"?

22 A. Yes.

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1 Q. All right. And it says, "4.1" -- and
2 this is for EMTAL 42 -- "4.14 times 10 to the 5th."
3 Right?

4 A. Yes.

5 Q. So, how many fibers are they finding in
6 this production sample of EMTAL 42?

7 MR. FARRELL: Objection --
8 BY MR. PLACITELLA:

9 Q. How do you -- I'm not that good at the
10 exponential. How many fibers are they finding in
11 that milligram?

12 MR. FARRELL: Objection to form,
13 foundation, beyond the scope of the notice, calls for
14 expert testimony.

15 BY MR. PLACITELLA:

16 Q. You can do the math. What is it? How
17 many?

18 MR. FARRELL: Same objections, beyond the
19 scope of the notice.

20 THE WITNESS: I'm not an expert. I know
21 what 4 times 10 to the 5th is. I don't know what it
22 means in this perspective.

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1 BY MR. PLACITELLA:

2 Q. What is 4 times 10 to the 5th?

3 A. It's 40,000.

4 Q. 40,000. So, they found, according to
5 this, 40,000 fibers in one milligram of EMTAL 42.
6 Correct?

7 MR. FARRELL: Objection to form,
8 foundation, beyond the scope of the notice.

9 BY MR. PLACITELLA:

10 Q. Correct?

11 A. I'm really not prepared to talk about
12 this. I just didn't prepare for this.

13 Q. Then there's -- two over, it says,
14 EMTAL 42 -- another EMTAL 42. This time they found
15 6.7 times 10 to the 4th in a milligram, 10 to the
16 6th. So, that would be what? That would be 600,000
17 fibers in a single milligram?

18 MR. FARRELL: Objection to form,
19 foundation, beyond the scope of the notice.

20 Do you have any questions that relate to
21 the reasons you said you needed a third day of this
22 deposition?

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1 MR. PLACITELLA: I'm just probing what he
2 told me is all the data. I think I'm entitled to do
3 that.

4 BY MR. PLACITELLA:

5 Q. So, somewhere around more than 600,000
6 fibers per milligram. Is that what this says?

7 MR. FARRELL: Objection to form,
8 foundation, beyond the scope of the notice, calls for
9 expert testimony.

10 THE WITNESS: I'm sorry. I didn't mean
11 to imply, when I answered your question before, that
12 I had looked at this data and I understood it all and
13 that I was familiar with it and what it would mean in
14 this context. All I was trying to say was that we
15 were talking about talc investigations. Georgia Tech
16 came up, and I mentioned that we had -- we had
17 produced reports that showed results from Georgia
18 Tech, among other places.

19 BY MR. PLACITELLA:

20 Q. Okay. So, let's go back to page 2. You
21 see where it says -- I highlighted it -- "38 crushed
22 rock samples have been sent to Georgia Institute --

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1 to Georgia Institute of Technology for qualitative
2 transmission electron microscopy investigations."

3 Do you see that?

4 A. Yes.

5 Q. Where are those results?

6 MR. FARRELL: Objection.

7 BY MR. PLACITELLA:

8 Q. Where have you produced them?

9 MR. FARRELL: Objection to form and
10 foundation.

11 Where in the document are you?

12 MR. PLACITELLA: Right here. I've
13 highlighted it. 38 crushed rock samples.

14 BY MR. PLACITELLA:

15 Q. Where are the results from the Georgia
16 Institute of Technology when they did the TEM?

17 A. Well, again, I'll say it in the same way.
18 There are other reports and results that we have
19 obtained from Georgia Tech that we produced. So,
20 there was a report on July 17, 1979, from Triglia to
21 Hemstock where, again, results were --

22 Q. What are you looking at, sir?

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1 A. A July 17, 1979, memo from Triglia to
2 Hemstock.

3 Q. What tab?

4 A. This is Tab 30 in the compendium.
5 And again, it may or may not apply to
6 these. I'm just saying, as I said before, we have a
7 lot of results from Georgia Tech.

8 I haven't looked at each of these
9 documents to try to link what samples were what --
10 were included in what reports. I'm just saying we
11 received results from them. I can't tell you a lot
12 of detail about the reports themselves.

13 Q. But it's very important to know the
14 differences, at least for me.

15 All right. You just showed me Tab 30,
16 which was a July 17, 1979 memo from Triglia to
17 Hemstock. This, again, is looking at production
18 samples. Correct?

19 A. I don't know. I don't know all the
20 contents. I haven't read it and haven't analyzed it,
21 so, I can't say.

22 Q. EMTAL 42, they found abundant fibers.

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1 EMTAL 500, they found many fibers.

2 There is nothing in this document about
3 testing the ore, is there?

4 MR. FARRELL: Objection to form,
5 foundation.

6 THE WITNESS: I don't know. I haven't
7 read through it. I wasn't -- I wasn't preparing to
8 look at these in detail and try to analyze them.

9 BY MR. PLACITELLA:

10 Q. Well, here -- here is the reason I'm
11 asking you this question: There was a lot of
12 testimony in both Dr. Hemstock's deposition and
13 Dr. Triglia's deposition about the study they did of
14 the ore in the EMTAL mine. You agree?

15 A. Yes. There was discussion about that,
16 yes.

17 Q. And I think you told me that all the
18 testing results that you could find were located in
19 P-15, which was the Cahill compilation. Correct?

20 MR. FARRELL: Objection to form.

21 THE WITNESS: I'm not sure -- when did I
22 say it was all in --

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1 BY MR. PLACITELLA:

2 Q. As you sit here today, can you find in
3 P-15 any testing results concerning the study that
4 was done by Dr. Hemstock and Dr. Gale of the mine
5 that was extensively discussed in their depositions?

6 MR. FARRELL: Objection to form,
7 foundation, asked and answered.

8 THE WITNESS: No. And I'm sorry. I
9 don't think I ever did say that that data -- that
10 that data and those results were in here. What I
11 tried to say was that results from Georgia Tech that
12 we had received we had produced.

13 There were several reports that had
14 Georgia Tech information. I didn't say that that was
15 the information from that particular study.

16 BY MR. PLACITELLA:

17 Q. Well, where is the information from that
18 study, sir?

19 MR. FARRELL: Objection to form,
20 foundation, asked and answered, harassing the
21 witness.

22 THE WITNESS: We haven't found those

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1 exhibits.

2 BY MR. PLACITELLA:

3 Q. So --

4 MR. FARRELL: Which exhibits are we
5 talking about?

6 MR. PLACITELLA: I think the record is
7 clear. I'm moving on to something else.

8 MR. FARRELL: You showed him a document
9 discussing 38 samples of talc. You've seen the
10 documents. I don't even know what we're talking
11 about right now.

12 MR. PLACITELLA: I think the witness is
13 answering my questions. Thank you.

14 BY MR. PLACITELLA:

15 Q. One of the things you were asked about to
16 produce and to talk about -- actually, just to talk
17 about was, under the court order -- and I put it up
18 here -- the location and completeness of all original
19 files related to lawsuits filed against Engelhard and
20 BASF for injuries allegedly related to EMTAL talc.

21 Do you see that?

22 A. Yes.

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1 Q. So, I want to ask you some questions
2 about that.

3 Where are those files?

4 MR. FARRELL: Objection to form,
5 foundation, asked and answered during day one and two
6 of the deposition.

7 THE WITNESS: The files that we have that
8 we obtained from Cahill, and those were all files
9 related to Engelhard, are located here at Kirkland &
10 Ellis.

11 BY MR. PLACITELLA:

12 Q. So, they are all in this building?

13 MR. FARRELL: Objection to form and
14 foundation.

15 THE WITNESS: I don't know if they are
16 all here, but they're all in the possession of -- of
17 Kirkland & Ellis or BASF.

18 BY MR. PLACITELLA:

19 Q. And I did ask you some questions. These
20 are just follow-up.

21 So, the current custodian of those files
22 is Kirkland & Ellis. Is that your understanding?

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1 MR. FARRELL: Objection to form and
2 foundation, vague as to which files.

3 BY MR. PLACITELLA:

4 Q. The litigation files from 1984 to the
5 present.

6 MR. FARRELL: Objection to form,
7 foundation, asked and answered, vague as to which
8 files.

9 THE WITNESS: That's my understanding.

10 BY MR. PLACITELLA:

11 Q. Were all of those files, to your
12 knowledge, scanned and OCR'd?

13 MR. FARRELL: Objection to form and
14 foundation.

15 THE WITNESS: I'm not sure what OCR'd is.

16 BY MR. PLACITELLA:

17 Q. In other words, so you could do word
18 searches on them. Were they all scanned
19 electronically?

20 A. My understanding is that they were all --
21 they were all scanned, yes.

22 Q. And can they all be -- run word searches

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1 to find things on them?

2 A. It depends on the form of the document.
3 If it was typewritten, you could do a search. If it
4 was handwritten, you may not be able to.

5 Q. But all the typewritten documents that
6 are under the custody and control of Kirkland &
7 Ellis, you could run word searches on. Correct?

8 MR. FARRELL: Objection to form,
9 foundation, beyond scope.

10 THE WITNESS: And which files are we
11 talking about?

12 BY MR. PLACITELLA:

13 Q. The historical litigation files called
14 for that you were supposed to talk about under No. 13
15 of the court order.

16 MR. FARRELL: Objection to form,
17 foundation, misstates the notice.

18 THE WITNESS: Could you repeat the
19 question again?

20 BY MR. PLACITELLA:

21 Q. Yes, sir.

22 All of those electronic files in their

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1 electronic form are under the custody and control of
2 Kirkland & Ellis. Correct?

3 MR. FARRELL: Objection to form and
4 foundation.

5 THE WITNESS: As I understand it, yes.

6 BY MR. PLACITELLA:

7 Q. If you wanted to find something in those
8 files, you could do a word search if it was a
9 typewritten document. Correct?

10 MR. FARRELL: Objection to form,
11 foundation, beyond the scope.

12 THE WITNESS: You could do a search, a
13 word search.

14 BY MR. PLACITELLA:

15 Q. So, for example, if I wanted to search
16 all of the letters that were written by Cahill Gordon
17 in the context of the -- this litigation, I should be
18 able to find that. Correct?

19 MR. FARRELL: Objection to form,
20 foundation, beyond the scope.

21 THE WITNESS: I don't know. That would
22 be something that counsel here would know.

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<p>1 BY MR. PLACITELLA:</p> <p>2 Q. Well, I could type in Cahill Gordon, and</p> <p>3 I'd get all of the documents with Cahill Gordon on</p> <p>4 them. Right?</p> <p>5 A. I haven't done it myself, so, I don't</p> <p>6 know. I haven't done that, so, I don't know.</p> <p>7 MR. PLACITELLA: Do you have P-13,</p> <p>8 please, over there?</p> <p>9 BY MR. PLACITELLA:</p> <p>10 Q. Do you see on P-13, the judge actually</p> <p>11 put, in her own handwriting, an addition?</p> <p>12 A. Yes.</p> <p>13 Q. And you've read that. Correct?</p> <p>14 A. Yes.</p> <p>15 Q. And the judge says that, in addition to</p> <p>16 testifying about everything that I asked for on the</p> <p>17 notice, you must be able to testify fully with regard</p> <p>18 to the document searches conducted in this case.</p> <p>19 Correct?</p> <p>20 A. That's what it says, yes.</p> <p>21 Q. So, part of your charge is to know how</p> <p>22 documents can be searched. Correct?</p>	<p>1 Q. Right. And what they did is they, in</p> <p>2 addition to doing some manual searches, they did word</p> <p>3 searches. Correct?</p> <p>4 A. That's right, yes.</p> <p>5 Q. And they could do word searches of the</p> <p>6 litigation files, correct?</p> <p>7 MR. FARRELL: Objection to form and</p> <p>8 foundation.</p> <p>9 THE WITNESS: Yes.</p> <p>10 BY MR. PLACITELLA:</p> <p>11 Q. So, if I wanted --</p> <p>12 MR. FARRELL: Excuse me. Just give me</p> <p>13 one second to object, just so we don't have an angry</p> <p>14 court reporter.</p> <p>15 Go ahead, Mr. Placitella.</p> <p>16 BY MR. PLACITELLA:</p> <p>17 Q. So, if I wanted to search for all the</p> <p>18 letters written by Cahill Gordon to plaintiff's</p> <p>19 lawyers, I should be able to find them. Correct?</p> <p>20 MR. FARRELL: Objection to form,</p> <p>21 foundation, beyond the scope of the notice.</p> <p>22 THE WITNESS: And the answer is I never</p>
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<p>1 MR. FARRELL: Objection to form,</p> <p>2 foundation.</p> <p>3 THE WITNESS: I'm not sure. If I could</p> <p>4 look at that. I would have to look at it again.</p> <p>5 BY MR. PLACITELLA:</p> <p>6 Q. Sure. Look at the whole thing.</p> <p>7 A. And what was the question again? I'm</p> <p>8 sorry.</p> <p>9 (Witness reads over the document.)</p> <p>10 I'm sorry. What was the question?</p> <p>11 Q. You are supposed to know how document</p> <p>12 searches can be done according to the judge's</p> <p>13 handwritten order. Correct?</p> <p>14 MR. FARRELL: Objection to form and</p> <p>15 foundation.</p> <p>16 THE WITNESS: I guess it is not clear</p> <p>17 what the judge meant. I mean, the judge says,</p> <p>18 "Testify fully with regard to the document searches</p> <p>19 conducted." I don't know if it says who conducted</p> <p>20 them, but I did learn about how they are conducted</p> <p>21 generally here, yes.</p> <p>22 BY MR. PLACITELLA:</p>	<p>1 searched Cahill Gordon, so, I don't know what would</p> <p>2 happen. I know you can do word searches. I've just</p> <p>3 never done it, so I don't know.</p> <p>4 BY MR. PLACITELLA:</p> <p>5 Q. Well, presumably, if it's all the</p> <p>6 documents are word-searchable and there are documents</p> <p>7 in there from Cahill Gordon, I should be able to find</p> <p>8 them. Correct?</p> <p>9 MR. FARRELL: Objection to form,</p> <p>10 foundation, calls for speculation.</p> <p>11 THE WITNESS: Again, I just don't know</p> <p>12 because I haven't done it. You can do word searches.</p> <p>13 I know that.</p> <p>14 BY MR. PLACITELLA:</p> <p>15 Q. Are you limited to the words you can</p> <p>16 search?</p> <p>17 MR. FARRELL: Objection to form.</p> <p>18 THE WITNESS: Not that I know of. I</p> <p>19 don't --</p> <p>20 BY MR. PLACITELLA:</p> <p>21 Q. Then can you only search "asbestos" and</p> <p>22 not "Cahill Gordon"?</p>

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<p>1 MR. FARRELL: Objection to form.</p> <p>2 THE WITNESS: I don't know. I don't</p> <p>3 think so, but I don't know.</p> <p>4 BY MR. PLACITELLA:</p> <p>5 Q. If we wanted to find all the answers to</p> <p>6 interrogatories that were filed by Engelhard or BASF</p> <p>7 in a case, we should be able to just do a word</p> <p>8 search. Right?</p> <p>9 MR. FARRELL: Objection to form,</p> <p>10 foundation, beyond the scope of the notice.</p> <p>11 THE WITNESS: Again, it depends on what</p> <p>12 you're looking for and what words you would use.</p> <p>13 BY MR. PLACITELLA:</p> <p>14 Q. How about "interrogatory"?</p> <p>15 MR. FARRELL: Objection to form,</p> <p>16 foundation, beyond the scope of the notice.</p> <p>17 THE WITNESS: I haven't done it myself,</p> <p>18 so, I can't say specifically whether "interrogatory"</p> <p>19 would come up. It's a word search, so I would think</p> <p>20 so, but I don't know.</p> <p>21 BY MR. PLACITELLA:</p> <p>22 Q. What about all the motions filed with</p>	<p>1 Q. Can you answer it?</p> <p>2 MR. FARRELL: I'll take that as you can't</p> <p>3 tell me.</p> <p>4 MR. PLACITELLA: I'll take it as I'm not</p> <p>5 answering your question. You can ask me as many as</p> <p>6 you want.</p> <p>7 MR. FARRELL: Got it. I assume, then,</p> <p>8 you don't have an answer.</p> <p>9 MR. PLACITELLA: Okay.</p> <p>10 THE WITNESS: I haven't done it myself.</p> <p>11 You can do word searches, I know that, and I've seen</p> <p>12 some run as examples.</p> <p>13 BY MR. PLACITELLA:</p> <p>14 Q. Are you aware as to whether Engelhard or</p> <p>15 BASF ever conducted an internal investigation to</p> <p>16 determine whether original evidence was destroyed</p> <p>17 pursuant to the March 7, 1984 memo from Dr. Hemstock?</p> <p>18 MR. FARRELL: Objection to form,</p> <p>19 foundation.</p> <p>20 THE WITNESS: I'm sorry. Could you</p> <p>21 repeat the question?</p> <p>22 BY MR. PLACITELLA:</p>
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<p>1 courts, papers filed with courts? Presumably, we</p> <p>2 should be able to find that too. Correct?</p> <p>3 MR. FARRELL: Same objection. Beyond the</p> <p>4 scope of the notice.</p> <p>5 THE WITNESS: Again, I don't know. It</p> <p>6 depends on what the word you use and what you are</p> <p>7 searching for, I guess.</p> <p>8 BY MR. PLACITELLA:</p> <p>9 Q. So, if I typed in the word "summary</p> <p>10 judgment," I should be able to find that as easy as I</p> <p>11 could find "EMTAL," if the words existed in the</p> <p>12 database. Correct?</p> <p>13 MR. FARRELL: Objection to form,</p> <p>14 foundation, beyond the scope.</p> <p>15 Do you have any questions that actually</p> <p>16 relate to this?</p> <p>17 MR. PLACITELLA: Yes. They all relate.</p> <p>18 They all relate.</p> <p>19 MR. FARRELL: How do they relate to the</p> <p>20 searches we conducted to put these boxes here in the</p> <p>21 room with you?</p> <p>22 BY MR. PLACITELLA:</p>	<p>1 Q. Sure. Are you aware as to whether</p> <p>2 Engelhard or BASF ever conducted an internal</p> <p>3 investigation to determine whether original evidence</p> <p>4 was destroyed pursuant to the March 7, 1984 memo</p> <p>5 issued by Dr. Hemstock that we discussed on day one?</p> <p>6 MR. FARRELL: And this is getting very</p> <p>7 close to the line of privileged information. It's a</p> <p>8 yes-or-no answer as to whether you know one way or</p> <p>9 the other, and that's it, Mr. Steinmetz.</p> <p>10 THE WITNESS: I don't know.</p> <p>11 BY MR. PLACITELLA:</p> <p>12 Q. Do you know whether Engelhard ever</p> <p>13 concluded that original evidence was destroyed</p> <p>14 pursuant to the 1984 Hemstock memo?</p> <p>15 MR. FARRELL: Objection to form and</p> <p>16 foundation.</p> <p>17 THE WITNESS: No, I don't know.</p> <p>18 BY MR. PLACITELLA:</p> <p>19 Q. Okay. The documents from the physical</p> <p>20 testing box, do you have them, that we marked this</p> <p>21 morning?</p> <p>22 A. I don't have these -- yes. I have these,</p>

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1 yes.
2 Q. So, just showing you 32, 33, and 34.
3 As it relates to the evidence, P-32
4 through 34, which are the documents relating to the
5 testing of EMTAL talc for asbestos that came from the
6 Box No. Exhibit 5. Are you with me?
7 A. Yes.
8 Q. Do you have any of the underlying data
9 that goes with those exhibits, for example, the
10 x-ray -- the x-ray printouts or photomicrographs or
11 anything like that?
12 MR. FARRELL: Objection to form and
13 foundation.
14 THE WITNESS: We have summaries of some
15 of the information. We don't have photomicrographs,
16 but we have, for example, lab notebook entries
17 related to this type of -- to this -- to these
18 documents.
19 BY MR. PLACITELLA:
20 Q. Okay. Other than what's in 32, 33, and
21 34, P-15, and the lab notebooks, are you aware of any
22 other documents in the custody and control of BASF

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1 relating to the testing of EMTAL talc or ore for
2 asbestos?
3 MR. FARRELL: Objection to form,
4 foundation.
5 THE WITNESS: Yes. There are some
6 published documents that weren't included in that
7 compendium or the compilation because that was a
8 compilation of Engelhard testing. But there are some
9 published documents, published articles that dealt
10 with surveys of the Johnson site.
11 BY MR. PLACITELLA:
12 Q. Okay, fair enough.
13 So, let me ask the question this way:
14 Other than Exhibits 32, 33, 34, what is ever in P-15,
15 and the lab notebooks, are you aware of any other
16 documents generated by or requested by Engelhard
17 concerning the testing of EMTAL talc for asbestos?
18 MR. FARRELL: Objection to form and
19 foundation.
20 THE WITNESS: I'm sorry. What timeframe
21 are we talking about here?
22 BY MR. PLACITELLA:

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1 Q. At any time that Engelhard -- by
2 Engelhard, at any time.
3 MR. FARRELL: Objection to form,
4 foundation, overbroad.
5 THE WITNESS: Well, if we include going
6 forward until now, we obviously have tested some of
7 the samples that we have that we've talked about
8 earlier today.
9 BY MR. PLACITELLA:
10 Q. Yes. But I'm not talking about the
11 litigation samples that we talked about today. I'm
12 talking about testing that was done by or on behalf
13 of Engelhard, not BASF or their lawyers. All right?
14 So, let me rephrase it.
15 I'm referring now specifically to testing
16 done by or on behalf of Engelhard relating to the
17 testing of EMTAL talc or ore for asbestos.
18 Are you aware of anything other than
19 P-32, 33, 34, whatever is in P-15, and the lab
20 notebooks?
21 MR. FARRELL: Objection to form,
22 foundation, overbroad.

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1 THE WITNESS: I don't know everything
2 that was in the compilation because there was
3 privileged information in there. So, I don't know
4 everything that was in there.
5 Based on what I know, there are -- yes,
6 there are several dozen, hundreds -- hundreds of
7 documents that we've produced are what we have from
8 those sources.
9 BY MR. PLACITELLA:
10 Q. So, nothing other than I've just
11 identified.
12 MR. FARRELL: Objection to form,
13 foundation, overbroad, harassing the witness.
14 THE WITNESS: Nothing that I can think of
15 right now.
16 BY MR. PLACITELLA:
17 Q. Okay. And now, you said there were --
18 you believe there was certain information withheld
19 from you that might relate to the testing of asbestos
20 and EMTAL talc. Is that what you said?
21 MR. FARRELL: Objection to form.
22 THE WITNESS: I said I don't know what's

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<p>1 in those privileged documents. That's all.</p> <p>2 BY MR. PLACITELLA:</p> <p>3 Q. Did you ask to see them?</p> <p>4 A. I was told you can't see them.</p> <p>5 Q. Why not? You've a representative of</p> <p>6 BASF. Maybe I can't see them, but why can't you see</p> <p>7 them?</p> <p>8 MR. FARRELL: Objection to form,</p> <p>9 foundation.</p> <p>10 THE WITNESS: I don't know. I'm not a</p> <p>11 lawyer.</p> <p>12 BY MR. PLACITELLA:</p> <p>13 Q. Did you ask to see them?</p> <p>14 A. No.</p> <p>15 MR. FARRELL: Objection to form and</p> <p>16 foundation.</p> <p>17 THE WITNESS: No. I was told that I</p> <p>18 wouldn't be seeing them.</p> <p>19 BY MR. PLACITELLA:</p> <p>20 Q. So, you don't know whether they would be</p> <p>21 germane to your testimony here or not.</p> <p>22 MR. FARRELL: Objection to form and</p>	<p>1 I'll give it to you.</p> <p>2 A. Thank you. Yes.</p> <p>3 Q. And when I asked you about it last time,</p> <p>4 you said you weren't sure what you produced. You</p> <p>5 were going to go look. Did you have an opportunity</p> <p>6 to do that?</p> <p>7 A. I did, and I think that everything that</p> <p>8 we've produced -- that we have, was originally</p> <p>9 produced by you at some point.</p> <p>10 Q. So, other than the documents that came</p> <p>11 from my office, you did not find any evidence in the</p> <p>12 files of BASF related to Dr. Glassley?</p> <p>13 MR. FARRELL: Objection to form and</p> <p>14 foundation.</p> <p>15 THE WITNESS: I'm sorry. Could you</p> <p>16 repeat that?</p> <p>17 BY MR. PLACITELLA:</p> <p>18 Q. Yes. Other than the documents that my</p> <p>19 office produced at Dr. Glassley's deposition -- you</p> <p>20 read that deposition. Correct?</p> <p>21 A. Yes.</p> <p>22 Q. Other than the documents my office</p>
Page 723	Page 725
<p>1 foundation.</p> <p>2 THE WITNESS: I trust that my counsel</p> <p>3 prepared me for this.</p> <p>4 BY MR. PLACITELLA:</p> <p>5 Q. What does that mean?</p> <p>6 A. I trust that they gave me what I needed</p> <p>7 and what was necessary for me to answer your</p> <p>8 questions.</p> <p>9 Q. Have you reviewed any type of privilege</p> <p>10 log to see if anything on the privilege log was</p> <p>11 withheld from you from P-15?</p> <p>12 A. I've seen the privilege log. I didn't</p> <p>13 see anything that stood out, but I didn't look at it</p> <p>14 in that context.</p> <p>15 Q. Okay. On the first day --</p> <p>16 We should probably just mark this for</p> <p>17 completeness.</p> <p>18 BY MR. PLACITELLA:</p> <p>19 Q. In the notice on P-12, No. 8 asks for all</p> <p>20 notes, samples, reports, photographs or other</p> <p>21 printouts relating to the testing by William Glassley</p> <p>22 in the Westfall case and the Martin case.</p>	<p>1 produced at the Glassley deposition, BASF has located</p> <p>2 no documents in their historical litigation files</p> <p>3 related to Dr. Glassley?</p> <p>4 MR. FARRELL: Objection to form and</p> <p>5 foundation.</p> <p>6 THE WITNESS: I don't know. There may be</p> <p>7 documents that mention his name. I don't know that.</p> <p>8 For example, I don't know -- I'm sure</p> <p>9 there are documents that mention his name, but as far</p> <p>10 as I know, there are no documents attributable to him</p> <p>11 that we found in our files.</p> <p>12 BY MR. PLACITELLA:</p> <p>13 Q. Well, do you have documents where you saw</p> <p>14 his name but he didn't author?</p> <p>15 A. I haven't seen it. I just say there may</p> <p>16 be some. I haven't seen them.</p> <p>17 For example, I would think there are</p> <p>18 documents that list different depositions that have</p> <p>19 been taken. His name may be on there. I don't know.</p> <p>20 This is speculation on my part.</p> <p>21 Q. Okay. You recall that the plaintiff in</p> <p>22 the Westfall case hired Dr. Glassley as his expert?</p>

1 A. Yes. I recall that.
2 Q. And when you went and looked and produced
3 whatever was left from the Westfall litigation file,
4 there was nothing in that file relating to the work
5 of Dr. Glassley. Is that fair?
6 A. As I mentioned last time, I didn't go
7 through every page in there. So, I can't say that I
8 looked at every single page in every one of those
9 boxes, but I haven't seen anything that came from
10 there that was from Glassley.
11 Q. Do you recall that he testified that he
12 traveled to the Johnson mine and collected ore
13 samples from outside the entrance to the mine?
14 A. Yes, I --
15 MR. FARRELL: Objection to form.
16 THE WITNESS: Yes. I remember that.
17 BY MR. PLACITELLA:
18 Q. And he testified that he ran tests on the
19 samples he gathered, including sending the samples
20 out to an outside laboratory.
21 MR. FARRELL: Objection to form.
22 THE WITNESS: Yes. I remember he

1 testified about samples, but he didn't give much
2 detail on where he found them, how he picked them up,
3 what he did with them after he found them, how he
4 kept control of them as a chain of custody.
5 BY MR. PLACITELLA:
6 Q. Do you recall that Dr. Glassley testified
7 that, in the samples he looked at, he found
8 chrysotile asbestos --
9 MR. FARRELL: Objection to form.
10 BY MR. PLACITELLA:
11 Q. -- from the samples from that mine?
12 MR. FARRELL: Objection to form,
13 foundation, beyond the scope of the notice.
14 THE WITNESS: I'd have to read the
15 testimony again. I know he reported on what he
16 found. Before I say "yes" or "no," I would have to
17 look at it again to confirm.
18 MR. PLACITELLA: Why don't you mark that
19 next.
20 (Exhibit
21 No. ,
22 , w

1 marked for identification.).
2 BY MR. PLACITELLA:
3 Q. Could you -- you've seen this deposition
4 of Dr. Glassley before. Correct?
5 MR. FARRELL: Do you have a copy for me,
6 Mr. Placitella?
7 MR. PLACITELLA: No. I only brought two.
8 Sorry. I'm sure you have it, though.
9 MR. FARRELL: So, the Court's instruction
10 about bringing copies of the documents was optional
11 for you, I guess?
12 MR. PLACITELLA: Mr. Farrell, I'm not
13 going to respond to you. I brought 200 pounds of
14 documents here. You have documents that originated
15 in New Jersey from a New Jersey corporation. You
16 decided to take them outside of the state. I
17 traveled here two times to D.C. at your convenience.
18 No complaint. If I had to bring three copies of
19 every document, I physically could not do it. So, I
20 brought them on the train with me. I am sure you
21 have copies here since you have everything here. If
22 you want to break for two minutes, we'll get your

1 copies of Mr. Glassley's deposition. I'm happy to
2 wait.
3 MR. FARRELL: I'm just noting the fact
4 that the Court asked you to bring copies of all of
5 the documents, and you have not done so.
6 MR. PLACITELLA: I know exactly what the
7 Court said, and it's on the record. So, if you want
8 to take a break and get the transcript because you
9 think you're at a disadvantage, although counsel has
10 it probably up on her Thinkpad in front of me, that's
11 fine.
12 So, do we need to take a break or can I
13 just ask the question?
14 MR. FARRELL: I'll take a look at the
15 copy that Mr. Steinmetz is looking at.
16 MR. PLACITELLA: Okay.
17 BY MR. PLACITELLA:
18 Q. I'm just asking you: Is this the
19 deposition you reviewed before?
20 A. I am just looking at it because it's been
21 a couple of weeks, and I just want to make sure it's
22 the same one.

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<p>1 Q. Okay. Sure.</p> <p>2 (Witness reviews the document.)</p> <p>3 A. I believe this is the one.</p> <p>4 Q. Okay. I'm referring you to page 74 of</p> <p>5 the transcript where Mr. Farrell asks Dr. Glassley:</p> <p>6 "Yes, and let me ask it more precisely.</p> <p>7 You were prepared to testify in the Westfall case</p> <p>8 that EMTAL talc contained chrysotile asbestos without</p> <p>9 having seen internal Engelhard documents that discuss</p> <p>10 whether EMTAL talc contained asbestos. True?</p> <p>11 "ANSWER: I was willing to testify that</p> <p>12 the talc samples from the Johnson mine contained</p> <p>13 chrysotile asbestos."</p> <p>14 Does that refresh your memory?</p> <p>15 A. I -- I am seeing it, and I believe this</p> <p>16 is it.</p> <p>17 MR. FARRELL: Objection to form,</p> <p>18 foundation, beyond the scope of the notice.</p> <p>19 MR. PLACITELLA: It's not beyond. We'll</p> <p>20 get there.</p> <p>21 BY MR. PLACITELLA:</p> <p>22 Q. Is it your understanding that --</p>	<p>1 foundation.</p> <p>2 THE WITNESS: I know that there was a</p> <p>3 document that called for the return of certain</p> <p>4 documents from the -- from the case. Glassley</p> <p>5 testified that he gave some of it back to his</p> <p>6 attorney. He also -- to the plaintiff's attorney.</p> <p>7 He also kept material on his own. He couldn't</p> <p>8 remember what exactly, but he did keep enough to</p> <p>9 write a pretty lengthy report ten years later.</p> <p>10 BY MR. PLACITELLA:</p> <p>11 Q. I'm going to get to all of that.</p> <p>12 Am I correct that Glassley, over his</p> <p>13 objection, was forced to return to the plaintiff's</p> <p>14 lawyer in the Westfall case his samples and</p> <p>15 underlying scientific data?</p> <p>16 MR. FARRELL: Objection to form and</p> <p>17 foundation.</p> <p>18 THE WITNESS: Over his objection, I would</p> <p>19 have to read specifically how he said it.</p> <p>20 BY MR. PLACITELLA:</p> <p>21 Q. Okay. Let's look at page 89 of his</p> <p>22 deposition. Do you see that?</p>
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<p>1 MR. FARRELL: How does it relate to the</p> <p>2 location of Dr. Glassley's notes, what his testimony</p> <p>3 in the case is going to be?</p> <p>4 MR. PLACITELLA: I will get there.</p> <p>5 BY MR. PLACITELLA:</p> <p>6 Q. So --</p> <p>7 MR. FARRELL: We have put in 15 minutes</p> <p>8 of new ground today and four hours of material that</p> <p>9 is either beyond the scope of the notice or you have</p> <p>10 already covered.</p> <p>11 MR. PLACITELLA: Probably I would finish</p> <p>12 a lot earlier if you didn't testify for about a half</p> <p>13 hour already. But let's just keep going, okay?</p> <p>14 MR. FARRELL: We could have been finished</p> <p>15 after day two.</p> <p>16 MR. PLACITELLA: Well, I don't think so,</p> <p>17 and obviously the judge didn't think so.</p> <p>18 BY MR. PLACITELLA:</p> <p>19 Q. So, am I correct that, as a condition of</p> <p>20 settlement in the Westfall case, Dr. Glassley was</p> <p>21 forced to give back his scientific data?</p> <p>22 MR. FARRELL: Objection to form and</p>	<p>1 A. Yes.</p> <p>2 Q. He's asked about an exhibit by</p> <p>3 Mr. Farrell, Exhibit 5, which is his report, the</p> <p>4 summary of what you did in the Westfall case.</p> <p>5 "Does the summary describe -- document</p> <p>6 describe all the analyses you did in connection with</p> <p>7 Westfall?</p> <p>8 "ANSWER: I believe so.</p> <p>9 "Have you tested samples of Johnson ore</p> <p>10 or talc at any other time?</p> <p>11 "No.</p> <p>12 "What happened to the five samples that</p> <p>13 you collected from the area around the Johnson mine?</p> <p>14 "ANSWER: Ultimately, I sent them back to</p> <p>15 Mr. Prentiss."</p> <p>16 Does that refresh your memory of what</p> <p>17 happened to those samples?</p> <p>18 MR. FARRELL: Objection to form,</p> <p>19 foundation, misstates Dr. Grassley's testimony.</p> <p>20 THE WITNESS: That's what they -- that's</p> <p>21 what you read.</p> <p>22 BY MR. PLACITELLA:</p>

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1 Q. Okay. And if you go to page 94, he's
2 asked:

3 "Of the data that you generated at the
4 time of the Westfall case, you mentioned earlier some
5 of it you wanted to keep.

6 "QUESTION: Tell me what -- which of the
7 data that you would have wanted to keep after
8 Westfall.

9 "I would have wanted to keep the
10 photographic plates from the TEM work, the electron
11 microprobe data, the printouts, those runs. Those
12 would have been the key things, those two things."

13 Do you see that?

14 A. I see it, yes.

15 Q. Okay. And do you see, on the next page,
16 96, he said that he also sent samples to Rudolph
17 von Huene to prepare sections. Do you see that?

18 A. I see that, yes.

19 Q. And you earlier said that Dr. Glassley
20 kept some of his material, but he wasn't sure what
21 that was. Was that your testimony?

22 MR. FARRELL: Objection to form,

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1 keep?"

2 And he said, "The only thing I had left
3 was my field notebook. I told him that I really did
4 not want to submit those because the field notebook
5 contained information not only about my visit to the
6 Johnson mine and Windham but also information from
7 all of my other, the work I was doing in the San Juan
8 Islands in Washington State, work I was doing in the
9 other parts of New York State and Vermont. They were
10 my field notes. Those were -- I was not going to
11 give those up if I could avoid it."

12 Do you see that?

13 A. Yes, I see it.

14 Q. Does that refresh your memory as to what
15 documents Dr. Glassley kept in his possession related
16 to a study at the Vermont mine?

17 MR. FARRELL: Objection to form,
18 foundation. Dr. Glassley's testimony speaks for
19 itself. Beyond the scope.

20 Go ahead.

21 THE WITNESS: All right. At this point,
22 he says he only had his field notebook. I think

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1 foundation. His testimony speaks for itself.

2 THE WITNESS: That was what I remembered
3 from reading it, that he wasn't clear on exactly what
4 he had kept and -- and what had happened to it after
5 he lost it.

6 BY MR. PLACITELLA:

7 Q. So, let's go to page 38.

8 Do you see where it says, "Did you tell
9 Mr. Prentiss you wanted to keep all these materials
10 you had during the Westfall case"?

11 "I told him I wanted to keep some of the
12 material. There was some stuff I didn't care that
13 much about that wasn't basic fundamental data, but
14 some of it I wanted to.

15 "Which stuff didn't you care much about?

16 "Letters that were correspondence between
17 us, record of time spent on things, billing issues.
18 I think there was some Xerox copies of publications,
19 I can always reproduce those, things like that.

20 "Anything else?"

21 He says, "Not that I recall."

22 Then he said, "What materials did you

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1 later on his testimony evolved to where he said there
2 was other information that he must have had in order
3 to write the report that he wrote in 1992.

4 BY MR. PLACITELLA:

5 Q. I'm going to get to that. I'm just
6 talking about the documents that he turned back over
7 to Mr. Prentiss.

8 What investigation did you do to
9 determine what happened to the documents that he
10 turned over to Mr. Prentiss that he had to give back
11 to Engelhard?

12 MR. FARRELL: Objection to form,
13 foundation.

14 THE WITNESS: I -- I didn't do anything,
15 and I don't even know what he turned back, based on
16 his testimony.

17 BY MR. PLACITELLA:

18 Q. Well, he says he turned back his
19 notebooks, samples, and photomicrographs. Correct?

20 MR. FARRELL: Objection to form,
21 foundation.

22 BY MR. PLACITELLA:

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1 Q. That's what it says.

2 MR. FARRELL: Objection to form and
3 foundation.

4 THE WITNESS: And then later on he says
5 he kept things, and it was enough to write a report.
6 And I just don't know what those things that he kept
7 were.

8 BY MR. PLACITELLA:

9 Q. Sir, did BASF or Engelhard ever take
10 possession of Dr. Glassley's notebook, samples, or
11 photomicrographs at the conclusion of the Westfall
12 case?

13 MR. FARRELL: Objection to form,
14 foundation, beyond the scope of the notice.

15 THE WITNESS: I -- I don't know that.

16 BY MR. PLACITELLA:

17 Q. Why don't you know that?

18 MR. FARRELL: Same objections.

19 THE WITNESS: Because I don't know what
20 he turned back.

21 BY MR. PLACITELLA:

22 Q. He said -- he testified what he turned

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1 back.

2 MR. FARRELL: Objection to form,
3 foundation, beyond the scope, harassing the witness,
4 asked and answered, not just today but also when we
5 were here for two days two weeks ago.

6 THE WITNESS: Then, if he said that, that
7 speaks for itself. But as I mentioned, later on in
8 his testimony it appears he kept a lot more things.

9 BY MR. PLACITELLA:

10 Q. Well, that was in the Martin case where
11 some things popped up. Right? That wasn't in the
12 Westfall case.

13 MR. FARRELL: Objection to form,
14 foundation --

15 MR. PLACITELLA: We're going to get
16 there.

17 MR. FARRELL: -- beyond the scope,
18 argumentative.

19 BY MR. PLACITELLA:

20 Q. Sir, what did BASF or Engelhard do with
21 the scientific data that was turned back over and the
22 samples that were turned back over by Dr. Glassley to

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1 their lawyers? Do you know?

2 MR. FARRELL: Objection to form and
3 foundation.

4 THE WITNESS: No, I don't know.

5 BY MR. PLACITELLA:

6 Q. Did you ask?

7 A. I don't know if I specifically asked.
8 We've talked about it, and I know that there was a
9 letter or a stipulation for destroying that. I just
10 don't know personally whether it was actually
11 destroyed.

12 Q. Well, that stipulation had nothing to do
13 with Dr. Glassley's samples. Correct?

14 MR. FARRELL: Objection.

15 BY MR. PLACITELLA:

16 Q. That had to do with information that was
17 generated by Engelhard. Correct?

18 MR. FARRELL: Objection to form,
19 foundation, beyond the scope.

20 THE WITNESS: I don't know. And once
21 again, I don't know if he turned those things back
22 over.

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1 MR. PLACITELLA: Well, can I have P-12,
2 please?

3 BY MR. PLACITELLA:

4 Q. Do you have it?

5 A. I don't have it there.

6 Q. You understand you were asked to testify
7 specifically about the samples, the reports, and the
8 data that Dr. Glassley had in his possession?

9 MR. FARRELL: Objection to form,
10 misstates the notice.

11 BY MR. PLACITELLA:

12 Q. You were asked to be prepared to talk
13 about the destruction or loss of any and all notes,
14 samples, reports, and photographs relating to the
15 testing by William Glassley in the Westfall case and
16 the Martin case. Correct?

17 A. That's what the -- that's what the
18 document states. And, again, I don't know if they
19 were destroyed. I don't know if they were even
20 turned back. That's my problem.

21 Reading his testimony, he started out
22 saying he had turned everything back, and then later

1 on it turned out that he hadn't because he was able
2 to write a report. So, I just don't know.

3 Q. Well, what investigation did you
4 undertake in order to comply with the court order to
5 make those determinations?

6 MR. FARRELL: Objection to form,
7 foundation, harassing the witness.

8 THE WITNESS: I read Glassley's
9 testimony, and we haven't found those documents or
10 those samples. So, that's all I can say.

11 BY MR. PLACITELLA:

12 Q. But the Court ordered you to be prepared
13 to testify concerning the location of all notes,
14 samples, reports, and photographs relating to the
15 testing of William Glassley.

16 What did you do in order to investigate
17 and be prepared to testify today about those issues?

18 MR. FARRELL: Objection to form,
19 foundation, asked and answered at least a half dozen
20 times, harassing the witness.

21 THE WITNESS: I read the testimony,
22 looked at what we have, been able to find things, and

1 spoke with counsel.

2 BY MR. PLACITELLA:

3 Q. Did counsel -- when you spoke to counsel,
4 did he tell you that -- did you ask him what happened
5 to the stuff?

6 MR. FARRELL: Objection -- objection to
7 form and foundation.

8 THE WITNESS: Not this specifically, no.
9 BY MR. PLACITELLA:

10 Q. Why not? That's what the court order
11 said. You are supposed to come here and talk about
12 that. Why wouldn't you ask him?

13 MR. FARRELL: Objection to form,
14 foundation, harassing the witness, asked and
15 answered.

16 THE WITNESS: Because I don't know the
17 location, because I don't know. We haven't found
18 them.

19 BY MR. PLACITELLA:

20 Q. And you don't know whether those -- that
21 material was destroyed?

22 MR. FARRELL: Objection to form,

1 foundation, harassing the witness, asked and
2 answered.

3 THE WITNESS: I don't personally know.

4 BY MR. PLACITELLA:

5 Q. And counsel didn't tell you what happened
6 to it. Is that fair?

7 MR. FARRELL: Same objections, asked and
8 answered, harassing the witness.

9 THE WITNESS: I -- I just don't know what
10 happened to them.

11 BY MR. PLACITELLA:

12 Q. Do you know whether anyone at Engelhard
13 ever took control of Glassley's scientific data?

14 MR. FARRELL: Objection to form,
15 foundation, asked and answered.

16 THE WITNESS: I don't know. Again, I
17 don't know what he actually turned in, if he turned
18 it in. I presume somebody did, but I just don't
19 know.

20 BY MR. PLACITELLA:

21 Q. You have in front of you P-25?

22 A. Yes.

1 Q. This is the request for admission
2 responses from BASF in this case?

3 A. Yes.

4 Q. You saw these the last time?

5 A. Yes.

6 Q. In preparing for today, did you go back
7 and look at them?

8 A. I'm sure I reviewed them at some point,
9 yes.

10 Q. Can you go to page 49, which is Request
11 No. 93?

12 A. Yes.

13 Q. Do you see No. 93 says, "At the
14 conclusion of the Westfall case, the samples
15 collected by William Glassley were turned over to
16 counsel for Engelhard."

17 And on the bottom, it says, "BASF admits
18 that certain samples collected by Dr. Glassley were
19 turned over to counsel for Engelhard." Do you see
20 that?

21 A. Yes.

22 Q. And counsel never told you that, in

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1 preparation for your deposition, that they already
2 provided these answers?

3 MR. FARRELL: Objection to form and
4 foundation. He just said that he had this document
5 and looked at it as part of his preparation.

6 MR. PLACITELLA: I hear you.

7 BY MR. PLACITELLA:

8 Q. Go ahead.

9 A. Yeah. And it said pursuant to the
10 stipulations that I mentioned earlier. And I
11 mentioned earlier that I don't doubt that he turned
12 some over. I just can't identify what exactly he
13 turned. So, I don't know if he turned over the
14 photomicrographs or the -- or the samples.

15 Q. Well, you were supposed to investigate
16 and come here to testify. Why would you not know
17 what BASF has already admitted in responses to
18 discovery in this case --

19 MR. FARRELL: Objection to form.

20 BY MR. PLACITELLA:

21 Q. -- if you were prepared to testify?

22 MR. FARRELL: Objection to form,

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1 THE WITNESS: It says certain photographs
2 were turned over.

3 BY MR. PLACITELLA:

4 Q. And No. 5 says that Dr. Glassley's notes
5 relating to the testing performed at the Johnson mine
6 were turned over to counsel for Engelhard. Correct?

7 MR. FARRELL: Objection to form,
8 foundation.

9 THE WITNESS: Again, it says certain
10 notes. Again, I don't know what ones.

11 BY MR. PLACITELLA:

12 Q. Did you ask?

13 A. No.

14 Q. In light of these admissions, you never
15 asked in order to prepare for today's testimony?

16 MR. FARRELL: Objection to form,
17 foundation, argumentative, harassing the witness.

18 THE WITNESS: No. I guess, because they
19 had already been admitted, there was no need to --

20 BY MR. PLACITELLA:

21 Q. No need to prepare you on it even though
22 the Court said --

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1 foundation, argumentative.

2 Why are you wasting 15 minutes on
3 something that's been admitted in an RFA? We covered
4 this today, on day two, day one, and it's been
5 admitted in an RFA.

6 Do you have something new to cover?

7 BY MR. PLACITELLA:

8 Q. Sir, can you answer my question, why you
9 don't know this information?

10 A. It just -- it says that certain samples
11 were collected. I'm not disputing that.

12 Q. It says that samples were collected.
13 Correct?

14 A. Per the stipulation, yes.

15 Q. Okay. It says that -- the next one, 94,
16 says that photographs relating to the testing by
17 Glassley were turned -- turned over to Engelhard.
18 Correct?

19 A. Yes.

20 Q. And they admit that. Correct?

21 MR. FARRELL: Objection to form,
22 foundation.

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1 MR. FARRELL: Excuse me.

2 BY MR. PLACITELLA:

3 Q. -- that you should be ready to talk about
4 it, sir?

5 MR. FARRELL: The witness is answering
6 your question, and you're interrupting him. You're
7 also harassing him. You've covered this on three
8 different days. It's been admitted in an RFA, which
9 means there is no point in these questions at all.

10 If you're going to waste time covering
11 all this, despite what you told the Court about the
12 need for a third day, you should at least give
13 Mr. Steinmetz the courtesy of answering your question
14 without interrupting him with your harassment and
15 your bullying of him.

16 MR. PLACITELLA: Are you done now?

17 MR. FARRELL: Do you have an actual new
18 question to ask the witness?

19 MR. PLACITELLA: Are you done now?

20 MR. FARRELL: I'm finished. Do you have
21 a new question?

22 MR. PLACITELLA: Are you done now? Just

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<p>1 tell me when you're done, and I'll ask my next 2 question. 3 MR. FARRELL: I'm finished. 4 MR. PLACITELLA: Thank you very much. 5 BY MR. PLACITELLA: 6 Q. Is this the first time you're finding out 7 that Dr. Glassley turned over his photographs, 8 samples, and notes of the testing he did in Westfall? 9 MR. FARRELL: Objection to form, 10 foundation, misstates Mr. Steinmetz's testimony. 11 THE WITNESS: No. As I said, I've read 12 this before. I read his deposition. But reading his 13 deposition, it's not clear exactly what he turned 14 over or what he kept on his own. That's all. 15 BY MR. PLACITELLA: 16 Q. Can you go to 96, please. 17 Do you see where it says, "Engelhard or 18 its attorneys destroyed or disposed of all Johnson 19 mine ore samples tested by Dr. William Glassley in 20 the Westfall case"? 21 A. Yes. 22 Q. And they say -- they admit that at least</p>	<p>1 A. Yes. 2 MR. FARRELL: Objection to form and 3 foundation. 4 BY MR. PLACITELLA: 5 Q. What did you do to determine what was 6 destroyed? 7 MR. FARRELL: Same objections. 8 THE WITNESS: As I mentioned before, my 9 preparation was to talk to counsel, read the Glassley 10 testimony. 11 BY MR. PLACITELLA: 12 Q. So, did you ask counsel whether any of 13 the evidence was destroyed by BASF or Engelhard? 14 MR. FARRELL: Objection to form and 15 foundation. 16 THE WITNESS: It already says in here 17 that some was. 18 BY MR. PLACITELLA: 19 Q. But did you ask in preparing for today's 20 deposition? 21 MR. FARRELL: Same objections. 22 THE WITNESS: We met for a few days. I</p>
Page 751	Page 753
<p>1 certain of Dr. Glassley's talc samples were 2 destroyed. You never knew that before today? 3 MR. FARRELL: Objection to form, 4 foundation, misstates Mr. Steinmetz's testimony. 5 THE WITNESS: Again, I obviously didn't 6 remember everything in this document. I'm reading 7 it, and it says they were destroyed. Some of them 8 were. It doesn't say all of them, but certain talc 9 samples. 10 BY MR. PLACITELLA: 11 Q. Do you see No. 99 where Dr. Glassley's 12 notes were destroyed? 13 MR. FARRELL: Objection to form and 14 foundation. 15 THE WITNESS: It says certain of them, 16 yes. 17 BY MR. PLACITELLA: 18 Q. It says, "BASF admits that certain of 19 Dr. Glassley's note were turned over to counsel for 20 Engelhard and destroyed pursuant to the stipulation 21 and confidentiality order in place." 22 Do you see that?</p>	<p>1 don't remember specifically what I asked about that. 2 BY MR. PLACITELLA: 3 Q. Do you see on No. 102, which you have up 4 here, that the photographs of Dr. Glassley were 5 destroyed? 6 MR. FARRELL: Objection to form and 7 foundation. 8 THE WITNESS: It says that certain of his 9 photographs were turned over. Again, I don't know 10 what ones or what he had. 11 BY MR. PLACITELLA: 12 Q. Did you ask? 13 A. No. 14 Q. Who was it at Engelhard that destroyed 15 this evidence? 16 MR. FARRELL: Objection to form and 17 foundation. 18 THE WITNESS: I don't know that myself. 19 BY MR. PLACITELLA: 20 Q. Did you ask? 21 MR. FARRELL: Objection to form and 22 foundation, assumes facts.</p>

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<p>1 THE WITNESS: No.</p> <p>2 BY MR. PLACITELLA:</p> <p>3 Q. Without that evidence, how do we know</p> <p>4 whether it's important or not?</p> <p>5 MR. FARRELL: Objection to form,</p> <p>6 foundation.</p> <p>7 THE WITNESS: I don't know.</p> <p>8 MR. FARRELL: Are you moving to something</p> <p>9 else, Mr. Placitella?</p> <p>10 MR. PLACITELLA: Do you need to take a</p> <p>11 break?</p> <p>12 MR. FARRELL: I would like to if you are</p> <p>13 changing topics.</p> <p>14 MR. PLACITELLA: I can take a break any</p> <p>15 time you want.</p> <p>16 MR. FARRELL: Let's take a break.</p> <p>17 THE VIDEOGRAPHER: The time is now</p> <p>18 2:36 p.m. We are going off the record.</p> <p>19 (Recess taken.)</p> <p>20 THE VIDEOGRAPHER: The time is now</p> <p>21 2:58 p.m. We are back on the record.</p> <p>22 MR. PLACITELLA: So, for the record, we</p>	<p>1 confidentiality order entered in the Westfall case.</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Now, can you turn to page 3,</p> <p>5 please.</p> <p>6 A. Yes.</p> <p>7 Q. Paragraph 2.</p> <p>8 Do you see where it says, "This</p> <p>9 stipulation shall be applicable to govern all</p> <p>10 documents, including any transcripts of depositions</p> <p>11 of Engelhard hereto or hereafter furnished by or on</p> <p>12 behalf of Engelhard to the attorneys for any of the</p> <p>13 parties to the above-captioned action"?</p> <p>14 A. Yes.</p> <p>15 Q. And do you see, under 4A, it talks about</p> <p>16 documents furnished by Engelhard?</p> <p>17 MR. FARRELL: Objection to form.</p> <p>18 THE WITNESS: Yes, I see that.</p> <p>19 BY MR. PLACITELLA:</p> <p>20 Q. Can you go to the number F on page 5?</p> <p>21 A. Yes.</p> <p>22 Q. It says, "At the conclusion of all</p>
Page 755	Page 757
<p>1 broke at 2:36, and it is now 2:58 p.m.</p> <p>2 BY MR. PLACITELLA:</p> <p>3 Q. You had indicated that documents were</p> <p>4 collected and destroyed and evidence was collected</p> <p>5 and destroyed pursuant to a stipulation. Do you</p> <p>6 recall that?</p> <p>7 MR. FARRELL: Objection to form.</p> <p>8 THE WITNESS: Yes. That was in the</p> <p>9 admissions, yes.</p> <p>10 (Exhibit</p> <p>11 No. ,</p> <p>12 , w</p> <p>13 marked for identification.).</p> <p>14 BY MR. PLACITELLA:</p> <p>15 Q. I am going to show you what's been marked</p> <p>16 Exhibit 42.</p> <p>17 MR. FARRELL: Do you have a copy of me,</p> <p>18 Mr. Placitella?</p> <p>19 MR. PLACITELLA: Yes, I do, because it</p> <p>20 was light.</p> <p>21 BY MR. PLACITELLA:</p> <p>22 Q. Exhibit 42 is the stipulation and</p>	<p>1 proceedings herein, all documents subject to the</p> <p>2 terms of the stipulation shall be returned to Cahill</p> <p>3 Gordon."</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. There is nothing in the stipulation that</p> <p>7 says that the plaintiff's lawyer has to turn over the</p> <p>8 results from his own expert, is there?</p> <p>9 MR. FARRELL: Objection to form,</p> <p>10 foundation, beyond the scope.</p> <p>11 THE WITNESS: I don't know. I mean, I</p> <p>12 could read this whole document, but it's a legal</p> <p>13 document, and I just wouldn't know.</p> <p>14 BY MR. PLACITELLA:</p> <p>15 Q. Oh, but you said the stuff was taken and</p> <p>16 destroyed pursuant to his order. I don't see</p> <p>17 anything in his order that says that you can destroy</p> <p>18 the plaintiff's stuff. It just says that, if I'm</p> <p>19 reading it right, that Engelhard could get their own</p> <p>20 stuff back.</p> <p>21 Can you show me anywhere in this order</p> <p>22 where it says that you had the right to take other</p>

<p style="text-align: right;">Page 758</p> <p>1 evidence in the case back and destroy it?</p> <p>2 MR. FARRELL: Objection to form,</p> <p>3 foundation, beyond the scope. Misstates</p> <p>4 Mr. Steinmetz's testimony.</p> <p>5 Go ahead.</p> <p>6 THE WITNESS: I didn't state as personal</p> <p>7 knowledge that it was done per this stipulation. I</p> <p>8 was reading from the document that said, from the</p> <p>9 admissions that said certain documents or certain</p> <p>10 samples were destroyed per the stipulation agreement.</p> <p>11 BY MR. PLACITELLA:</p> <p>12 Q. Can we take a minute? Can you look and</p> <p>13 tell me where it says in this document that it was</p> <p>14 okay to destroy evidence that came from the</p> <p>15 plaintiff's expert? I don't see it anywhere.</p> <p>16 MR. FARRELL: Objection to form,</p> <p>17 foundation, beyond the scope.</p> <p>18 THE WITNESS: I'm just not a lawyer. I</p> <p>19 wouldn't be able to do that.</p> <p>20 BY MR. PLACITELLA:</p> <p>21 Q. So, what do you know about the Martin</p> <p>22 case?</p>	<p style="text-align: right;">Page 760</p> <p>1 that?</p> <p>2 MR. FARRELL: Objection to form.</p> <p>3 THE WITNESS: I'm not looking at it, but</p> <p>4 I know you read it, yes.</p> <p>5 BY MR. PLACITELLA:</p> <p>6 Q. And the destruction or loss of any</p> <p>7 evidence from the Martin case. Right?</p> <p>8 MR. FARRELL: Objection to form,</p> <p>9 foundation, misstates the notice.</p> <p>10 THE WITNESS: I don't have that in front</p> <p>11 of me, but I believe that you read that correctly.</p> <p>12 BY MR. PLACITELLA:</p> <p>13 Q. But you didn't do anything to find out</p> <p>14 what happened to the evidence from the Martin case?</p> <p>15 MR. FARRELL: Objection to form,</p> <p>16 foundation, misstates the notice, misstates</p> <p>17 Mr. Steinmetz's testimony, beyond the scope of the</p> <p>18 notice.</p> <p>19 THE WITNESS: As I mentioned before, I --</p> <p>20 I've read his testimony. I talked to counsel about</p> <p>21 what his testimony was in order to prepare for this.</p> <p>22 BY MR. PLACITELLA:</p>
<p style="text-align: right;">Page 759</p> <p>1 A. Very little. That it was a case in the</p> <p>2 1990s that had to do with EMTAL talc, very little</p> <p>3 more than that, and that Glassley was involved in it.</p> <p>4 Q. Well, what kind of investigation did you</p> <p>5 find out -- did you conduct to find out about the</p> <p>6 Martin case?</p> <p>7 MR. FARRELL: Objection to form,</p> <p>8 foundation, beyond the scope.</p> <p>9 THE WITNESS: No specific investigation.</p> <p>10 BY MR. PLACITELLA:</p> <p>11 Q. Did you do anything?</p> <p>12 MR. FARRELL: Objection to form,</p> <p>13 foundation.</p> <p>14 THE WITNESS: I worked with counsel to</p> <p>15 prepare for this deposition in general. I didn't do</p> <p>16 anything specific to that.</p> <p>17 BY MR. PLACITELLA:</p> <p>18 Q. Well, it says here, for example, pursuant</p> <p>19 to the court order, that you were to come here and</p> <p>20 talk about the location of all notes, samples,</p> <p>21 reports, photographs related to the testimony by</p> <p>22 William Glassley in the Martin case. Do you see</p>	<p style="text-align: right;">Page 761</p> <p>1 Q. So, you know what happened was that,</p> <p>2 sometime after the Westfall case was settled and</p> <p>3 Dr. Glassley's materials were turned over to counsel</p> <p>4 for Engelhard, another case in Rhode Island was filed</p> <p>5 called the Martin case, by a woman named Cuzzone.</p> <p>6 Correct?</p> <p>7 MR. FARRELL: Objection to form,</p> <p>8 foundation.</p> <p>9 THE WITNESS: I've seen the name. I -- I</p> <p>10 wouldn't have known that that was necessarily the</p> <p>11 Martin case, but I've seen the name Cuzzone, yes.</p> <p>12 BY MR. PLACITELLA:</p> <p>13 Q. Okay. And do you recall that what</p> <p>14 happened in the Martin case was that Cuzzone got</p> <p>15 ahold of some of the materials from the Westfall case</p> <p>16 and hired Dr. Glassley. Right?</p> <p>17 MR. FARRELL: Objection to form and</p> <p>18 foundation.</p> <p>19 THE WITNESS: Only what I saw in the --</p> <p>20 in the testimony that Glassley gave. I know there</p> <p>21 were a couple of exhibits that mentioned Cuzzone's</p> <p>22 name and the potential source of those. That's all I</p>

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<p>1 know about it from what was in his testimony. 2 BY MR. PLACITELLA: 3 Q. Well, you know what happened was, from 4 his testimony, that Cuzzone got some materials from 5 the Westfall case and ended up hiring Glassley in 6 that case. Correct? 7 MR. FARRELL: Objection to form, 8 foundation. 9 THE WITNESS: I don't remember that 10 specifically. I'm not saying it's not true. I just 11 don't remember it specifically. 12 BY MR. PLACITELLA: 13 Q. Can you take out Dr. Glassley's dep and 14 go to page 119. 15 A. Yes. 16 Q. Okay. This was Mr. Farrell asking him 17 questions. 18 It says, "Dr. Glassley, before we just 19 took a break, we were about to discuss the Martin 20 case and your work in that case with Elizabeth 21 Cuzzone. Do you recall that? 22 "ANSWER: Yes.</p>	<p>1 MR. FARRELL: Objection to form, 2 foundation, asked and answered. 3 THE WITNESS: I recall that he did a 4 report for this case. I don't recall the specifics 5 of the testimony and how it was requested, but I do 6 know that he did do one, yes. 7 BY MR. PLACITELLA: 8 Q. Okay. And do you recall that Cuzzone had 9 certain evidence that she had gotten from the Martin 10 case, and she sent it to Glassley. 11 MR. FARRELL: Objection. 12 BY MR. PLACITELLA: 13 Q. Correct? 14 MR. FARRELL: Objection to form, 15 foundation, beyond the scope. 16 THE WITNESS: I don't know. I don't 17 recall that. 18 BY MR. PLACITELLA: 19 Q. Can you go to page 51, please, of the 20 Glassley dep. Actually, 50. 21 Do you see line 16, they're talking about 22 Exhibit 6 to his deposition, marked from the Westfall</p>
Page 763	Page 765
<p>1 "Do you remember approximately when 2 Ms. Cuzzone first contacted you? 3 "No. 4 "Tell me about your first communication 5 with Ms. Cuzzone. 6 "As I recall, she called me on the phone. 7 We had a brief chat. She asked me if I had 8 participated in the Westfall case. Other than that, 9 I don't recall what the conversation, where it went. 10 "QUESTION: So, when Ms. Cuzzone first 11 contacted you, she already knew about the Westfall 12 case? 13 "ANSWER: I believe so." 14 Does that refresh your memory? 15 MR. FARRELL: Objection to form and 16 foundation. 17 THE WITNESS: I remember reading this 18 now. 19 BY MR. PLACITELLA: 20 Q. Okay. And do you recall that Cuzzone 21 asked Mr. Glassley to do a report in the Martin case 22 based upon what he did in the Westfall case?</p>	<p>1 case, entitled "Plaintiff's Answers to 2 Interrogatories of Defendant Whittaker Clark & 3 Daniels." 4 "Do you see that? 5 "Yes, I do. 6 "The document appears to be dated 7 March 2, 1983. Do you see that last page? Have you 8 ever seen that document before? 9 "Yes. 10 "Have you ever seen it before? 11 "It was in material that Elizabeth 12 Cuzzone sent to me, and I believe it was something 13 that Mr. Prentiss had also sent to me." 14 Do you see that? 15 A. Yes. 16 Q. Okay. Then a little further down: 17 "Do you remember what Ms. Cuzzone told 18 you when she gave you the document we have marked as 19 Exhibit 6? 20 "My recollection is that she was 21 providing to me materials from the Westfall case and 22 wanted me to look at them.</p>

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<p>1 "Did she provide you with any other 2 materials from the Westfall case? 3 "Much of what's here. 4 "When you say 'here,' you are referring 5 to the documents we have marked as Exhibits 3 and 4 6 to the deposition. Is that correct? 7 "ANSWER: That's correct." 8 Do you see that? 9 A. Yes. 10 Q. Okay. Then it goes on: 11 "If you would, Dr. Glassley, take a look 12 at the exhibits" -- this is Mr. Farrell -- "we have 13 marked so far, and I would like to know whether 14 Ms. Cuzzone, at the time of the Martin case, gave you 15 documents from the Westfall case other than those we 16 have marked as an -- as an exhibit to this 17 deposition. 18 "Not that I know of. Not that I recall. 19 This material -- this is material she did provide me. 20 I'm not certain it's everything that she provided 21 me." 22 Next page.</p>	<p>1 filed sometime in 2004. That would have been roughly 2 20 years after the Westfall case. Were you aware of 3 that? 4 MR. FARRELL: Objection to form and 5 foundation, beyond the scope. 6 THE WITNESS: If that's the date, that 7 would be about 20 years from 1983. 8 BY MR. PLACITELLA: 9 Q. Did you make a search for the Martin file 10 in the historical litigation files? 11 MR. FARRELL: Objection to form, 12 foundation, beyond the scope of the notice. 13 THE WITNESS: I did not, no. 14 BY MR. PLACITELLA: 15 Q. Did you ask that a search be made for the 16 Martin file to see what evidence existed from that 17 file from Dr. Glassley? 18 MR. FARRELL: Objection to form and 19 foundation. 20 THE WITNESS: I did not request a search 21 be done. It may have been done. I didn't ask for 22 one.</p>
Page 767	Page 769
<p>1 "Let me ask you differently," Mr. Farrell 2 says, "a different way. We have now marked a handful 3 of documents that you have in your possession and one 4 that -- which we had marked as Exhibit 6 that I 5 presented to you that you said that Ms. Cuzzone gave 6 to you at the time of the Martin case." 7 "ANSWER: Correct." 8 Do you see that? 9 A. Yes. 10 Q. So, does that refresh your recollection 11 that Dr. Glassley was asked to prepare a report in 12 the Martin case using his own field notes plus 13 information provided to him by Ms. Cuzzone? 14 MR. FARRELL: Objection to form, 15 foundation, beyond the scope. 16 THE WITNESS: Yes, I'd have to read the 17 whole thing through. I just recall that, at the end 18 of the deposition, toward the end, he starts talking 19 about information that he had and that he had lost in 20 a move. 21 BY MR. PLACITELLA: 22 Q. And this case, I'll represent to you, was</p>	<p>1 BY MR. PLACITELLA: 2 Q. Were you ever told that it was done? 3 MR. FARRELL: Same objections. 4 THE WITNESS: I don't recall. 5 BY MR. PLACITELLA: 6 Q. Well, pursuant to the court order, it 7 asks that you be prepared to testify concerning the 8 current location of all notes, samples, reports and 9 photographs related to the Martin case. What did you 10 do to do that? 11 MR. FARRELL: Objection to form, 12 foundation, argumentative, harassing the witness, 13 asked and answered. 14 THE WITNESS: As I mentioned, I reviewed 15 our files. I talked to counsel, and I read 16 Glassley's deposition. 17 BY MR. PLACITELLA: 18 Q. But you never made a request for the 19 Martin file? 20 MR. FARRELL: Same objections. 21 THE WITNESS: No, I did not. 22 BY MR. PLACITELLA:</p>

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1 Q. Was a search ever conducted of this
2 database that's word-searchable for -- for the Martin
3 case?

4 MR. FARRELL: Same objections. Beyond
5 the scope.

6 THE WITNESS: I would think so. I just
7 didn't remember talking about it.

8 BY MR. PLACITELLA:

9 Q. But nothing was provided to you related
10 to the Martin case other than the information I
11 provided to Mr. Farrell. Correct?

12 MR. FARRELL: Objection to form,
13 foundation, misstates the record.

14 THE WITNESS: I just don't know. I've
15 looked at so much information over the last three
16 weeks, I can't say for sure.

17 BY MR. PLACITELLA:

18 Q. Who at Engelhard was aware of the Martin
19 case and the evidence that was produced by Cuzzone
20 about the Westfall case, do you know?

21 MR. FARRELL: Objection to form,
22 foundation, beyond the scope of the notice.

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1 THE WITNESS: I don't know.

2 BY MR. PLACITELLA:

3 Q. At the time the Martin case was filed and
4 this information was produced by Ms. Cuzzone and
5 Dr. Glassley, was any type of investigation launched
6 to find out if there was any other information
7 related to the Westfall case?

8 MR. FARRELL: Objection to form,
9 foundation, beyond the scope of the notice.

10 THE WITNESS: I don't know.

11 BY MR. PLACITELLA:

12 Q. Well, what was done by Engelhard and its
13 counsel when the information from the -- from the
14 Westfall case resurfaced in the Martin case?

15 MR. FARRELL: Objection to form,
16 foundation, beyond the scope of the notice.

17 Do you have any questions that are
18 actually within the scope of your notice,
19 Mr. Placitella?

20 BY MR. PLACITELLA:

21 Q. Can you answer my question, please?

22 A. I don't know.

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1 MR. FARRELL: We've spent 20 minutes
2 today on the material you said you needed a third day
3 for.

4 BY MR. PLACITELLA:

5 Q. Who took possession of the evidence from
6 the Martin case when that case was terminated?

7 MR. FARRELL: Objection to form,
8 foundation, beyond the scope of the notice.

9 THE WITNESS: I don't know.

10 BY MR. PLACITELLA:

11 Q. In preparing for today's deposition, have
12 you produced anything from the Martin case?

13 MR. FARRELL: Objection to form,
14 foundation.

15 THE WITNESS: I'm sorry. "Produced" in
16 what context?

17 BY MR. PLACITELLA:

18 Q. As we sit here, have you produced
19 anything from the Martin case other than what I gave
20 to Mr. Farrell?

21 MR. FARRELL: Objection to form,
22 foundation, beyond the scope of the notice, misstates

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1 the notice.

2 THE WITNESS: I don't know. I just don't
3 know everything that's been produced, so much has
4 been produced.

5 BY MR. PLACITELLA:

6 Q. How are you prepared to talk about the
7 current location of notes, samples, reports, and
8 photographs related to the testing by Glassley in the
9 Martin case if you never looked?

10 MR. FARRELL: Objection to form,
11 foundation, asked and answered a half dozen or more
12 times at this point.

13 THE WITNESS: Again, I talked to counsel
14 and was prepared on what we had and where it would
15 be.

16 BY MR. PLACITELLA:

17 Q. And you produced nothing related to the
18 Martin case. Correct?

19 MR. FARRELL: Objection to form,
20 foundation, misstates the record.

21 THE WITNESS: I just don't know
22 everything that's been produced in this case.

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<p>1 MR. FARRELL: I -- I don't know why you 2 ask these questions, Mr. Placitella, that are 3 contrary to the facts as you know them. You know 4 that documents related to the Martin case have been 5 produced to you. I don't know why you persist in 6 asking these questions that assume a set of facts 7 that are contrary to reality. 8 MR. PLACITELLA: Thank you for your 9 testimony. 10 MR. FARRELL: Are you disputing -- 11 MR. PLACITELLA: I'm not going to respond 12 to any of your questions. 13 MR. FARRELL: Are you disputing this man 14 produced documents -- 15 MR. PLACITELLA: This man was ordered to 16 produce information here today and be prepared to 17 testify about it. 18 MR. FARRELL: And he's done that. 19 MR. PLACITELLA: Well, that will be for 20 the Court to determine. 21 Could you mark this next, please? 22 MR. FARRELL: I don't know why you would</p>	<p>1 case"? 2 MR. PLACITELLA: "All notes, samples, 3 reports, photographs, or other printouts relating to 4 the testing by William Grassley in the Westfall and 5 the Martin case." That's what he's supposed to 6 bring. 7 MR. FARRELL: Yes, William Glassley, not 8 the Martin case. You are holding Dr. Glassley's 9 report from the Martin case. Show me where it says 10 he is supposed to bring all the evidence from the 11 Westfall case or from the Martin case. 12 MR. PLACITELLA: Can we mark this, 13 please? 14 MR. FARRELL: It's not in there. 15 MR. PLACITELLA: Thank you. Thank you 16 for your testimony. We'll let the Court decide. 17 (Plaintiff's Exhibit No. 43, 18 document entitled Summary of 19 Activities Related to Services 20 Rendered for Decof & Grimm in the 21 Case of David H. Westfall vs. 22 Whittaker, Clark & Daniels, et</p>
Page 775	Page 777
<p>1 ask the witness questions based on facts you know not 2 to be true. But if you want to persist in doing it, 3 then I suppose I can't stop you from doing that. 4 MR. PLACITELLA: Yes, sir. 5 MR. FARRELL: You have now said no 6 documents from the Martin case have been produced to 7 you and yet, lo and behold, you pull out a document 8 from the Martin case that we produced to you. 9 MR. PLACITELLA: Yes, sir. I was asking 10 about here today, produced here today. He was 11 supposed to bring all the evidence related to the 12 Martin case with him today. 13 MR. FARRELL: Which request says "Bring 14 all of the evidence from the Martin case with you"? 15 MR. PLACITELLA: "The current location of 16 all notes, samples, reports, and photographs." He's 17 supposed to be able to testify. 18 MR. FARRELL: That's a topic -- 19 MR. PLACITELLA: "Their destruction or 20 loss." Okay? 21 MR. FARRELL: That's a topic, sir. Where 22 does it say, "Bring all of the evidence in the Martin</p>	<p>1 al., was marked for 2 identification.) 3 BY MR. PLACITELLA: 4 Q. I want to show you what's been marked 5 Plaintiff's 43. 6 MR. FARRELL: Do you have a copy for me? 7 MR. PLACITELLA: No, I don't. 8 BY MR. PLACITELLA: 9 Q. Have you ever seen this before? 10 A. Yes. 11 Q. Okay. When is the first time you saw 12 this? 13 A. In the last couple of weeks during 14 preparation. 15 Q. Okay. Did you produce this here today as 16 part of the materials that were requested? 17 A. I'm sorry. I'm not sure what you mean, 18 "did you produce it here today." 19 Q. Did you produce it as a representative of 20 BASF? Is it in any of those boxes behind you or in 21 those exhibits in front of you? 22 A. I don't know that it is in this room</p>

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1 today, but I know it has been produced.

2 Q. But you were told and you were ordered to
3 bring anything related to the testing by William
4 Glassley with you today. Correct?

5 MR. FARRELL: He just said it's been
6 produced to you. What is the problem?

7 BY MR. PLACITELLA:

8 Q. You didn't bring anything with you today.
9 Correct?

10 A. I guess when I read that, it didn't say
11 that I had to bring things with me. It just said
12 that I had to be prepared to talk about them.

13 MR. FARRELL: Mr. Placitella, are you
14 disputing this report was produced to you?

15 MR. PLACITELLA: I'm going to get there.

16 BY MR. PLACITELLA:

17 Q. Number 8 says, "All notes, samples,
18 reports, photographs, or other printouts relating to
19 the testing by William Glassley in the Martin case."
20 Correct?

21 A. I'm sorry. I don't have it in front of
22 me.

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1 Q. That's what you were to produce today,
2 number 8.

3 A. I guess I didn't -- it doesn't say -- I
4 didn't read it as "bring it with you." It just says
5 "Request for production," and it's been produced.

6 Q. It says you are supposed to produce it at
7 this deposition, sir, and be prepared to talk about
8 it.

9 Are you prepared to talk about this
10 report?

11 MR. FARRELL: Objection to form and
12 foundation. Misstates the notice.

13 THE WITNESS: I've seen it, and I'm
14 prepared to talk about it.

15 BY MR. PLACITELLA:

16 Q. Do you know where any of the data that's
17 referred to in this report is located?

18 MR. FARRELL: Objection to form,
19 foundation, vague as to data.

20 THE WITNESS: I'm sorry. Do you mean the
21 sources of the information in here?

22 BY MR. PLACITELLA:

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1 Q. Yes, sir, the SEM studies that he did,
2 the photographs, the samples, the TEM analysis, all
3 the things referred to. Do you know where any of
4 that is?

5 MR. FARRELL: Objection to form,
6 foundation.

7 THE WITNESS: I don't know where it is,
8 and I know, as I mentioned, later on in his
9 testimony, Glassley may have had some of it, but he
10 lost it as well. So, as far as I know, it doesn't
11 exist. I don't know where it is.

12 BY MR. PLACITELLA:

13 Q. Your testimony is Dr. Glassley lost his
14 photographs and his samples and the electro
15 micrographs. Is that your testimony?

16 MR. FARRELL: Objection to form,
17 foundation, argumentative.

18 THE WITNESS: No. My testimony is just
19 that some of the information that was used in here he
20 said he had when he wrote this, and he doesn't have
21 it now.

22 BY MR. PLACITELLA:

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1 Q. Yes, sir. He refers in this report to
2 SEM studies that he did. Correct?

3 A. I'd have to read it again, but, yes, I
4 think he does talk about that, yes.

5 Q. And where are they?

6 MR. FARRELL: Objection to form,
7 foundation.

8 THE WITNESS: I don't know.

9 BY MR. PLACITELLA:

10 Q. He refers to his TEM grids. Where are
11 they?

12 MR. FARRELL: Objection to form and
13 foundation.

14 THE WITNESS: I -- I don't know.

15 BY MR. PLACITELLA:

16 Q. He refers to samples that he tested.
17 Where are they?

18 MR. FARRELL: Same objections.

19 THE WITNESS: Again, I don't know, and I
20 don't know, when he refers to these, whether he's
21 talking about old ones that he had tested in the past
22 or he tested recently. I don't know.

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<p>1 BY MR. PLACITELLA: 2 Q. Does anybody at BASF know? 3 MR. FARRELL: Objection to form, 4 foundation. 5 THE WITNESS: I don't know if they exist. 6 So, I don't know if anybody at BASF knows. 7 BY MR. PLACITELLA: 8 Q. Okay. The title of this report, correct, 9 is "Summary of Activities Related To Services 10 Rendered For DeCof & Grimm in the case of David 11 Westfall vs. Whittaker Clark & Daniels, et al." 12 Correct? 13 A. There is a typo. It says "related to 14 survives," but that's what he meant. 15 MR. PLACITELLA: Okay. Can you mark this 16 next, please? 17 (Plaintiff's Exhibit No. 44, 18 letter dated August 10, 2010 from 19 Robert J. Kelly to Christopher 20 Placitella, was marked for 21 identification.) 22 MR. FARRELL: Do you have a copy for me?</p>	<p>1 BY MR. PLACITELLA: 2 Q. Do you see the Bates numbers are the 3 same? 4 A. Those numbers are in this document, yes. 5 Q. Do you see where it says, "Summary of 6 activities related to services rendered"? 7 A. Yes. 8 Q. And it's being withheld as attorney work 9 product. Do you see that? 10 A. Yes. 11 MR. FARRELL: Objection to form, 12 foundation, beyond the scope of the notice. 13 BY MR. PLACITELLA: 14 Q. Can you tell me how the report of 15 Dr. Glassley from -- that he authored in the Martin 16 case could, in any way, be withheld as work product 17 on behalf of BASF? 18 MR. FARRELL: Objection to form, 19 foundation, beyond the scope of the notice. 20 THE WITNESS: I'm not a lawyer. I have 21 no idea. 22 BY MR. PLACITELLA:</p>
Page 783	Page 785
<p>1 MR. PLACITELLA: That's the only copy I 2 have. 3 MR. FARRELL: So, you don't have a copy 4 for me? 5 MR. PLACITELLA: No, I don't. Sorry. 6 BY MR. PLACITELLA: 7 Q. Exhibit 44 is the August 10, 2010, letter 8 from Mr. Kelly to myself. And it's the privilege log 9 in the Comandini, Volk, Fuschino, and Paduamo cases. 10 Do you see that? 11 A. Yes. 12 Q. Can you go to page 7, please. 13 A. Yes. 14 Q. Do you see the fourth entry from the 15 bottom? 16 A. Yes. 17 Q. Do you see where it says BASF 611-1626? 18 A. Yes. 19 Q. Do you see how that corresponds with the 20 report of Dr. Glassley? 21 MR. FARRELL: Objection to form, 22 foundation, beyond the scope of the notice.</p>	<p>1 Q. Is there any way that you could look at 2 Dr. Glassley's report and figure out, in looking at 3 the entry on page 7, that it's actually the report of 4 Dr. Glassley? 5 MR. FARRELL: Objection to form, 6 foundation, beyond the scope of the notice. 7 THE WITNESS: I don't know. 8 BY MR. PLACITELLA: 9 Q. Do you see, up on the top of Glassley's 10 report, it's typed in, "Privileged and confidential. 11 Produced under seal in this case"? 12 A. Yes. I see that. 13 Q. Do you know, before this was ultimately 14 turned over in this case, had anybody else ever been 15 given, from 2004 and 2006 forward, a copy of 16 Dr. Glassley's report? 17 MR. FARRELL: Objection to form, 18 foundation, beyond the scope of the notice. 19 THE WITNESS: I don't know. 20 BY MR. PLACITELLA: 21 Q. Was anyone -- do you have any idea, from 22 the time this was put on the privilege log until</p>

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<p>1 sometime in this case, what happened to the materials 2 that were referenced in -- in this report? 3 MR. FARRELL: Objection to form, 4 foundation, beyond the scope of the notice. 5 THE WITNESS: All I know is that Glassley 6 said he lost some materials. 7 BY MR. PLACITELLA: 8 Q. Well, he didn't lose his report. Right? 9 MR. FARRELL: Same objections. 10 THE WITNESS: I don't know. He might 11 have. He didn't -- he didn't remember what he had 12 and what he had lost. 13 BY MR. PLACITELLA: 14 Q. Well, apparently, BASF had the report, 15 didn't they? 16 MR. FARRELL: Objection to form and 17 foundation. 18 THE WITNESS: It's here, yes. 19 BY MR. PLACITELLA: 20 Q. The last time we were together, you had a 21 book of document retention policies related to 22 Engelhard and BASF. Do you recall that?</p>	<p>1 MR. FARRELL: Objection to form, 2 foundation. Dr. Hemstock's testimony is what it is. 3 THE WITNESS: I don't remember that 4 testimony. There was so much of it. 5 BY MR. PLACITELLA: 6 Q. Do you have any reason to dispute that 7 testimony? 8 MR. FARRELL: Same objections. 9 THE WITNESS: I don't have any reason to 10 support it or dispute it. I don't know. 11 MR. PLACITELLA: I am getting close to 12 the end, so why don't we take ten minutes, and I'll 13 assemble what questions I have left. And hopefully 14 you will be done with me for the day. 15 THE VIDEOGRAPHER: The time is now 16 3:29 p.m. We are going off the record. 17 (Recess taken.) 18 THE VIDEOGRAPHER: The time is now 19 3:45 p.m. We are back on the record. 20 BY MR. PLACITELLA: 21 Q. Just a few more questions. 22 So, just to close the loop, other than</p>
Page 787	Page 789
<p>1 A. Yes. 2 Q. Okay. Did you find any document 3 retention policy that was being used by BASF before 4 August 1984? 5 MR. FARRELL: Objection to form. 6 THE WITNESS: There was one from 7 Engelhard dated in the 1960s. 8 BY MR. PLACITELLA: 9 Q. And what did that relate to? 10 A. Document retention. 11 Q. Did it allow the destruction of evidence 12 in cases and testing? 13 MR. FARRELL: Objection to form and 14 foundation. 15 THE WITNESS: I'd have to look at it 16 again. It addressed legal documents, so, I'm sure it 17 addressed that. 18 BY MR. PLACITELLA: 19 Q. Do you recall that Dr. Hemstock testified 20 in this case that, until he sent out the March 7, 21 1984 memo that was written by legal, that everything 22 in Research and Development was kept permanently?</p>	<p>1 the Glassley report that we marked, I think, as 2 Exhibit 45 and the documents that were identified at 3 Dr. Glassley's deposition, does BASF have any other 4 documents related to the testing of EMTAL talc by 5 Dr. Glassley? 6 MR. FARRELL: Objection to form, 7 foundation. 8 Are you including or excluding privileged 9 documents? 10 MR. PLACITELLA: I'm not -- I'm not going 11 to the privileged documents. I'm not -- I can't do 12 that. 13 MR. FARRELL: I understand you can't. 14 I'm trying to understand if you want his answer based 15 on what he knows -- 16 MR. PLACITELLA: It has got to be what he 17 knows. I can't ask him about privileged documents. 18 THE WITNESS: I'm not aware of others. 19 There may be some that were listed in the log. I 20 just don't -- in the privilege log. I just don't 21 remember ever seeing them. 22 BY MR. PLACITELLA:</p>

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1 Q. And you didn't really examine the
2 privilege log to see if there was anything that would
3 be relevant. Is that fair? I mean closely.

4 A. Correct. Yes.

5 Q. A number of documents talked about
6 Mr. Newger, who was the geologist. Have you located
7 Mr. Newger's lab notebook -- Ms., rather?

8 MR. FARRELL: Objection to form.

9 THE WITNESS: I don't know that we found
10 hers. I don't recall that we have.

11 BY MR. PLACITELLA:

12 Q. Did someone look?

13 A. Yes, we looked.

14 MR. PLACITELLA: I think that's all the
15 questions I have for now. Thank you very much.

16 MR. FARRELL: Are you finished?

17 MR. PLACITELLA: Unless somebody else has
18 questions and spurs more questions in my mind. But
19 at this point, I'm finished.

20 MR. FARRELL: Well, I don't have any
21 questions at this point.

22 So, let me just say for the record that,

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1 over the course of three days, Mr. Placitella asked
2 Mr. Steinmetz dozens and dozens of questions about
3 dozens and dozens of different testing documents.

4 Many of those questions related to 38
5 samples of talc that were tested in 1979, and after
6 asking him dozens of questions about those 38 samples
7 and Mr. Steinmetz saying he wasn't sure about the
8 test results and how the samples corresponded to
9 those, I believe Mr. Steinmetz ultimately said he
10 didn't think we had those test results.

11 And let me just say, just so the record
12 is clear, because I don't want this transcript to be
13 read or misinterpreted by --

14 MR. PLACITELLA: You cannot testify.

15 MR. FARRELL: Excuse me, sir.

16 MR. PLACITELLA: Okay, do what you want.
17 I'll be here another hour, I guess.

18 MR. FARRELL: Tab 21 is a March 23, 1979,
19 memo, subject "Talc investigation," that
20 Mr. Placitella used to ask questions about 38 rock
21 samples that were studied in 1979. I just want the
22 record to be clear which documents we're talking

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1 about.

2 Tab 25 from the Cahill compilation, which
3 I believe was marked as P-19, and April 11, 1979, an
4 Engelhard document, talc investigation review and
5 update, Bates No. BASF_SAMPSON 13154, which also
6 discusses the 38 rock samples.

7 And Tab 32 from P-19, again, the Cahill
8 compilation, this is a September 19, 1979, letter
9 from the Georgia Tech Engineering Experiment Station
10 to Engelhard which contains numerous test results
11 from testing that had been done in 1979.

12 I don't know why Mr. Placitella decided
13 to ask dozens of questions suggesting that Engelhard
14 or BASF doesn't have the results of the testing on
15 those 38 rock samples when he knows and I know that
16 BASF has those test results and that they've been
17 produced to Mr. Placitella and that the test results
18 exist.

19 So, I'm just going to say that for the
20 record because I believe Mr. Steinmetz misspoke after
21 he had been berated over the course of dozens and
22 dozens of questions in multiple days about it, and I

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1 just wanted the record to be clear about that.

2 MR. PLACITELLA: I appreciate your
3 testimony, Mr. Farrell.

4 BY MR. PLACITELLA:

5 Q. So, I guess I have a few more questions
6 for you, sir.

7 Going to Tab No. 21 of P-15.

8 MR. FARRELL: Are you disputing,
9 Mr. Placitella, that we have the test results?

10 MR. PLACITELLA: You did your testimony.
11 Now I'm going to ask Mr. Steinmetz questions.

12 MR. FARRELL: You've already asked him
13 your questions.

14 BY MR. PLACITELLA:

15 Q. Going to Tab 21 just referred to by
16 Mr. Farrell, is there anything in Tab 21 about the
17 results of the 38 -- of the analysis of the 38 rock
18 samples, what the results were?

19 A. It talks about the preparation of them
20 being in process, crushing, drying and pulverizing.

21 Q. It doesn't give any results. Correct?

22 A. Not at this point.

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1 Q. Okay. Can you put up Tab No. 30 -- 25,
2 Mr. Farrell just referred to.

3 Is there anything in Tab No. 25 that
4 provides the results for what was -- for the study
5 that was conducted by Mr. Hemstock and Mr. Gale of
6 the rock samples at the EMTAL mine?

7 A. Is it okay if I take a look at it?

8 Q. Yes, sir, please.

9 A. Great.

10 MR. FARRELL: While he's reading that,
11 Mr. Placitella --

12 MR. PLACITELLA: I'm not answering any
13 more of your questions.

14 MR. FARRELL: Well, you've written --

15 MR. PLACITELLA: I'm not answering any of
16 your questions. Don't even bother.

17 MR. FARRELL: Sir, you've written briefs
18 to the Court about the test results. Are you now
19 disputing that they exist? You have the documents in
20 your possession. Are you disputing they exist?

21 MR. PLACITELLA: I'm not going to answer
22 your question, sir.

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1 MR. FARRELL: That's really
2 disappointing, Mr. Placitella, to have an hour of
3 questions that presupposes that test results are
4 missing when you know they exist and have, in fact,
5 submitted briefs to the Court about them.

6 MR. PLACITELLA: So, why don't you tell
7 us what they are, Mr. Farrell.

8 MR. FARRELL: If you want me to tell you,
9 I would be happy to. The test results are contained
10 in the September 19, 1979, document which appears at
11 Tab 32 of the Cahill compilation, including the
12 sample numbers that begins at 6B, and goes into the
13 second row of that document.

14 MR. PLACITELLA: Okay. Thank you for
15 your testimony.

16 MR. FARRELL: If you want to pretend that
17 they don't exist, I suppose you can pretend that, but
18 I'm not going to pretend they don't exist.

19 MR. PLACITELLA: Thank you for your
20 testimony, sir.

21 (Witness reading over the document.)

22 THE WITNESS: So, on the second page,

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1 there is a mention of the 38 crushed rock samples
2 having been sent to Georgia Institute of Technology.

3 BY MR. PLACITELLA:

4 Q. Are there any test results?

5 A. There are test results. I don't know if
6 they're related directly to -- to these samples. It
7 doesn't say that they are.

8 Q. Sir, can we just go over, in detail,
9 Table 1 that talks about the production samples. And
10 you told me that you weren't an expert at -- tell me
11 whether there was like 600,000 fibers in the EMTAL
12 talc. Do you remember we just talked about that?

13 MR. FARRELL: Objection, asked and
14 answered.

15 THE WITNESS: Yes, I remember talking
16 about that.

17 BY MR. PLACITELLA:

18 Q. This exhibit -- I just want to know,
19 because Mr. Farrell made a statement on the record.
20 Is there anything in Tab No. 25 that provides the
21 test results for the study that was done by
22 Mr. Hemstock and Mr. Gale and ultimately Mr. Triglia,

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1 he got involved? Is there anything of the mine
2 itself? Is there anything in here about test
3 results?

4 A. Just the reference of them being --

5 MR. FARRELL: Objection to form,
6 foundation. Asked and answered.

7 THE WITNESS: There is a reference to
8 them being tested at this point.

9 BY MR. PLACITELLA:

10 Q. There's no test results, correct, in this
11 document?

12 MR. FARRELL: Objection to form,
13 foundation. There are a lot of test results in that
14 document.

15 BY MR. PLACITELLA:

16 Q. Sir, there's no test results in this
17 document pointed to by Mr. Farrell related to the
18 testing of the EMTAL mine by Mr. Hemstock, Mr. Gale,
19 or Mr. Triglia. Correct?

20 MR. FARRELL: Objection to form,
21 foundation. The whole document is about test results
22 of testing done by Dr. Hemstock, Mr. Gale, and

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1 Mr. Triglia.

2 BY MR. PLACITELLA:

3 Q. Sir, I'm going to ask the question again.

4 Are there any test results in Tab No. 25
5 specifically relating to the rock samples that were
6 taking -- the 38 rock samples that were taken by
7 Mr. Gale and Mr. Hemstock and handed over to
8 Mr. Triglia?

9 MR. FARRELL: Objection to form,
10 foundation.

11 BY MR. PLACITELLA:

12 Q. Is there anything in there, any test
13 results?

14 MR. FARRELL: Same objections.

15 THE WITNESS: There are all kinds of
16 results in here related -- related to EMTAL talcs and
17 other company talcs. It doesn't specifically list
18 the 38 samples at this point.

19 BY MR. PLACITELLA:

20 Q. Sir, the only test results in here
21 finding thousands of fibers in milligrams of EMTAL
22 were for the production samples. Correct?

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1 MR. FARRELL: Objection to form,
2 foundation, asked and answered.

3 I said the test results were in the
4 September 19, 1979, letter.

5 MR. PLACITELLA: I'm going to get to
6 that, sir. I'm happy to take your deposition on this
7 issue too.

8 BY MR. PLACITELLA:

9 Q. Let's just do this document.

10 Are there any test results in here
11 relating to the EMTAL mine ore?

12 A. No, I just --

13 MR. FARRELL: Objection to form and
14 foundation.

15 THE WITNESS: No, I just said there are
16 none related to the 38 samples that are discussed as
17 being at Georgia Tech at this point.

18 BY MR. PLACITELLA:

19 Q. Okay, let's go to 32.

20 I asked you a lot of questions about this
21 before. Is there anything in Tab 32 that indicates
22 that these are test results related to the Engelhard

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1 EMTAL mine?

2 MR. FARRELL: Objection to form,
3 foundation.

4 THE WITNESS: I'm looking at a two-page
5 document. I'd have to -- I don't know the context
6 around this. It doesn't say that they're from an
7 EMTAL or a Johnson mine, but there are several
8 results listed. There are around 40 sample numbers
9 with results listed. I just don't know -- I'm
10 looking at them. There are several. I don't have
11 that information in front of me, what they relate to
12 in this case.

13 BY MR. PLACITELLA:

14 Q. How many samples are there here coded?

15 A. More than 50, I'd say.

16 Q. A lot more than 50, do you know? If I
17 count down just one column, I see 1, 2, 3, 4, 5, 6,
18 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20,
19 21, 22, 23, 24, 25, times 3, is like 75. Right?

20 A. And what's interesting, I think, if you
21 look at sample 6B through 74PS, I think that's 38.
22 So, I would think -- and then you go into

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1 the MC samples and then to the 4026 samples.

2 So, I suspect -- and I just don't have
3 every one in front of me, I suspect those 38 relate
4 to those.

5 Q. Okay. So, I'm going to ask you, if you
6 go back to 25 --

7 MR. FARRELL: Mr. Placitella, in fact,
8 knows that to be true.

9 MR. PLACITELLA: Could you please stop
10 testifying? You are breaking the court rules left
11 and right, and I'm tolerating it and not calling the
12 judge.

13 MR. FARRELL: If you want to talk to the
14 judge about asking disingenuous questions of the
15 witness, you let me mow.

16 MR. PLACITELLA: Please just stop.
17 Please just stop.

18 BY MR. PLACITELLA:

19 Q. Sir, in Exhibit 32, is there any
20 quantification on test results like there is on
21 Table 1 of Exhibit 25 --

22 MR. FARRELL: Objection to form.

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1 BY MR. PLACITELLA:

2 Q. -- where they are actually counting the
3 numbers of fibers per grid opening in -- in samples?

4 A. No, but they never said they were going
5 to do quantitative. These are qualitative results.

6 Q. And when you look at this document, is
7 there any way to tell where exactly these samples
8 came from? I'm talking about now Exhibit 32.

9 MR. FARRELL: Objection to form,
10 foundation.

11 THE WITNESS: Well, I think we talked
12 about this earlier. We know that the 38 samples came
13 from the Johnson mine.

14 BY MR. PLACITELLA:

15 Q. But where in the Johnson mine? Do we
16 know from looking at -- let's assume that the samples
17 are here, okay? Give you the benefit of the doubt.
18 Let's assume.

19 From looking at this document, does it
20 tell us where in the mine the samples were taken?

21 MR. FARRELL: Objection to form and
22 foundation.

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1 THE WITNESS: This document doesn't, but,
2 you know, if you -- I mean, the samples that Glassley
3 took, we didn't know where they came from exactly
4 either. We do know they came from the mine.

5 BY MR. PLACITELLA:

6 Q. Actually, we do. He said he got them
7 from the entrance to the mine. Do you recall that,
8 sir?

9 So, please answer my question. Is there
10 anything in Exhibit No. 32 that tells you where these
11 samples were taken from specifically?

12 MR. FARRELL: Objection to form,
13 foundation, argumentative.

14 THE WITNESS: Well, we know these didn't
15 come from the outside in the entrance, but we do know
16 they came from inside the mine where they were
17 actually taken.

18 BY MR. PLACITELLA:

19 Q. How do you know that, sir?

20 A. Because I said earlier on I would have to
21 look back, that they were taking samples from the
22 mine.

Page 804

1 Q. Well, how do you know they were actually
2 the same samples?

3 MR. FARRELL: Objection to form,
4 foundation.

5 THE WITNESS: I'm sorry. The same
6 samples --

7 BY MR. PLACITELLA:

8 Q. Well, I'm looking here -- you see, sir,
9 it says, "At long last is the data and micrographs"
10 -- do you have the micrographs, by the way?

11 MR. FARRELL: Objection to form and
12 foundation.

13 THE WITNESS: We haven't located them.

14 BY MR. PLACITELLA:

15 Q. You don't have the micrographs.

16 It says, "At long last is the data and
17 micrographs of the last three sets of asbestos
18 counts."

19 Do you see that?

20 A. Yes, I see that.

21 Q. Where are the rest of them?

22 MR. FARRELL: Objection to form and

Page 805

1 foundation.

2 THE WITNESS: I -- I'm not sure. I would
3 have to look back. And again, I don't know the
4 contents of all the documents and -- and a
5 chronological accounting of when everything was being
6 done, so, I don't know. I'd have to look at all of
7 the documents.

8 BY MR. PLACITELLA:

9 Q. And assuming -- we're looking at the next
10 page, okay? Tell me where in the mine these samples
11 were taken from.

12 MR. FARRELL: Objection to form,
13 foundation, asked and answered, harassing the
14 witness.

15 THE WITNESS: All I can tell you is they
16 were found in the mine.

17 BY MR. PLACITELLA:

18 Q. Remember, there were maps where the
19 samples were taken, and they are no longer available.
20 That would have told us where in mine they were taken
21 if these are, in fact the mine samples. Correct?

22 MR. FARRELL: Objection to form,

Page 806

1 foundation, harassing the witness, asked and
2 answered, argumentative.

3 THE WITNESS: I'm not sure I remember
4 that they were mapped.

5 BY MR. PLACITELLA:

6 Q. Do you remember that -- that we went into
7 Dr. Triglia's deposition and there were exhibits, and
8 the exhibits talked about the maps of the mine where
9 the samples were taken from? You don't recall that
10 from this morning?

11 MR. FARRELL: Same objections.

12 THE WITNESS: I recall the discussion
13 about maps of the mine. I don't know that they
14 specifically said that they were mapping to the
15 samples that were taken.

16 MR. PLACITELLA: We'll let the record
17 speak for itself.

18 BY MR. PLACITELLA:

19 Q. This does not tell us where, if they were
20 from the mine, where in the mine they were taken
21 from. Correct?

22 MR. FARRELL: Objection to form,

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1 BY MR. PLACITELLA:

2 Q. We don't know what level of the mine they
3 were taken from, correct, if they were, in fact, from
4 the mine?

5 MR. FARRELL: Same objections.

6 THE WITNESS: Again, we don't know
7 exactly where. We know they were taken from the
8 mine.

9 BY MR. FARRELL:

10 Q. Okay. We don't know what kind of rock
11 they were taken from in the mine. Correct?

12 MR. FARRELL: Objection to form,
13 foundation, misstates the record.

14 THE WITNESS: I don't know.

15 BY MR. PLACITELLA:

16 Q. We don't know whether they were taken
17 from the main ore body where the product was mined or
18 somewhere else. Correct?

19 MR. FARRELL: Objection to form,
20 foundation, misstates the record.

21 THE WITNESS: I would have to read
22 Hemstock's deposition again, but I know they were

Page 807

1 foundation, asked and answered.

2 THE WITNESS: I want to make sure we are
3 on the same page.

4 What we do know is that we have 38
5 samples from that mine. That's quite a few. So, I
6 suspect it's a pretty good cross-section.

7 BY MR. PLACITELLA:

8 Q. My question, sir, is: We don't know
9 where in the mine they were taken from. Correct?

10 MR. FARRELL: Same objections.

11 THE WITNESS: According this, no, we
12 don't.

13 BY MR. PLACITELLA:

14 Q. We don't know whether they were in
15 Level 4, Level 5, Level 6, Level 2. We have no idea.
16 Correct?

17 MR. FARRELL: Objection to form and
18 foundation, asked and answered, harassing the
19 witness.

20 THE WITNESS: We know they were collected
21 in the mine, and it is a good cross-section of the
22 mine because that was the point of the study.

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1 trying to get a good cross-section of the -- from the
2 mine.

3 BY MR. PLACITELLA:

4 Q. Sir, Exhibit No. 32 does not tell us what
5 part of the mine the samples were taken from.
6 Correct?

7 A. Yes, that's correct.

8 Q. It doesn't tell us what kind of rock they
9 were taken from. Correct?

10 MR. FARRELL: Objection, asked and
11 answered, harassing the witness.

12 THE WITNESS: 32 does not do that, yes.

13 BY MR. PLACITELLA:

14 Q. It does not tell us whether they were
15 from the main ore body. Correct?

16 MR. FARRELL: Same objections.

17 THE WITNESS: I would assume they would
18 be because they were trying to do a good
19 cross-section of the mine, but it doesn't state that
20 in this document.

21 BY MR. PLACITELLA:

22 Q. It doesn't tell us what percentage of the

<p style="text-align: right;">Page 810</p> <p>1 samples were positive for asbestos from specific</p> <p>2 parts of the mine. Correct?</p> <p>3 MR. FARRELL: Same objections. Objection</p> <p>4 to form, foundation, asked and answered.</p> <p>5 THE WITNESS: This does not.</p> <p>6 BY MR. PLACITELLA:</p> <p>7 Q. We don't have the photomicrographs for</p> <p>8 some expert to look at and say, "You know what?</p> <p>9 That's either right or wrong based upon my reading of</p> <p>10 the photomicrographs." Correct?</p> <p>11 MR. FARRELL: Objection to form,</p> <p>12 foundation.</p> <p>13 THE WITNESS: We don't have the</p> <p>14 photomicrographs. I don't know if that would be</p> <p>15 enough to make a determination even for an expert.</p> <p>16 So, I can't answer that entirely, I guess.</p> <p>17 BY MR. PLACITELLA:</p> <p>18 Q. Well, it was important enough for Georgia</p> <p>19 Tech to give them back to Mr. Triglia. Correct?</p> <p>20 MR. FARRELL: Objection to form and</p> <p>21 foundation, assumes facts.</p> <p>22 THE WITNESS: I don't know why they gave</p>	<p style="text-align: right;">Page 812</p> <p>1 BY MR. PLACITELLA:</p> <p>2 Q. There were no exact readings in this</p> <p>3 document. Correct?</p> <p>4 MR. FARRELL: Are you finished?</p> <p>5 Objection to form and foundation.</p> <p>6 THE WITNESS: From a science perspective,</p> <p>7 I don't know what you mean by "exact," but there are</p> <p>8 ranges that were reported, yes.</p> <p>9 BY MR. PLACITELLA:</p> <p>10 Q. So, for example, in 25, where they gave</p> <p>11 exact numbers, they don't exist in this document.</p> <p>12 Correct?</p> <p>13 MR. FARRELL: Objection to form and</p> <p>14 foundation.</p> <p>15 THE WITNESS: These are more</p> <p>16 quantitative, and I'm not sure that they ever meant</p> <p>17 to report the 38 samples quantitatively.</p> <p>18 BY MR. PLACITELLA:</p> <p>19 Q. Well, you don't know because we don't</p> <p>20 have all the documents related to this testing.</p> <p>21 Right?</p> <p>22 MR. FARRELL: Objection to form,</p>
<p style="text-align: right;">Page 811</p> <p>1 it back.</p> <p>2 BY MR. PLACITELLA:</p> <p>3 Q. We don't know what the actual counts were</p> <p>4 for these samples. Correct?</p> <p>5 MR. FARRELL: Objection to form,</p> <p>6 foundation, misstates the document.</p> <p>7 THE WITNESS: This is a qualitative</p> <p>8 assessment, and each of those code numbers correspond</p> <p>9 to levels.</p> <p>10 BY MR. PLACITELLA:</p> <p>11 Q. And we don't know whether a quantitative</p> <p>12 assessment was done, do we?</p> <p>13 MR. FARRELL: Objection to form and</p> <p>14 foundation.</p> <p>15 THE WITNESS: Well, it is quantitative to</p> <p>16 the -- to the extent that, by coding, you can tell</p> <p>17 whether it was zero to five, 5 to 15, greater than 55</p> <p>18 or that type of thing. So, there was some</p> <p>19 quantitation to it.</p> <p>20 Q. But it's not exact. Correct? They were</p> <p>21 just ranges. Correct?</p> <p>22 MR. FARRELL: Objection.</p>	<p style="text-align: right;">Page 813</p> <p>1 foundation. Again, misstates the record.</p> <p>2 THE WITNESS: I know that they sent them</p> <p>3 out. They reported twice that they were being</p> <p>4 reviewed, and then they got the results back from</p> <p>5 Georgia Tech, and Georgia Tech had produced the</p> <p>6 information in this format.</p> <p>7 BY MR. PLACITELLA:</p> <p>8 Q. What percentage of the samples tested</p> <p>9 positive for asbestos from the main ore body? Can</p> <p>10 you tell from looking at this document?</p> <p>11 MR. FARRELL: Objection to form and</p> <p>12 foundation.</p> <p>13 THE WITNESS: I'm sorry. Could you</p> <p>14 repeat that?</p> <p>15 BY MR. PLACITELLA:</p> <p>16 Q. Sure. If these are samples, results from</p> <p>17 the mine, what percentage of the tests tested</p> <p>18 positive for asbestos from the main ore body?</p> <p>19 MR. FARRELL: Objection to form,</p> <p>20 foundation, beyond the scope of the notice.</p> <p>21 THE WITNESS: I'm not a geologist, and I</p> <p>22 don't know what the main ore body is or would be.</p>

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1 That's not discussed in this, so, I guess I can't
2 answer.

3 BY MR. PLACITELLA:

4 Q. There are no conclusions by a scientist
5 at Engelhard concerning the significance or
6 insignificance of these raw numbers. Correct?

7 MR. FARRELL: Objection to form,
8 foundation, beyond the scope of the notice.

9 THE WITNESS: I don't know.

10 BY MR. PLACITELLA:

11 Q. Do you know whether any of the samples
12 came from talc brannerite rock at the EMTAL mine?

13 MR. FARRELL: Objection to form, beyond
14 the scope of the notice, calls for expert testimony.

15 THE WITNESS: I don't know what talc
16 brannerite rock is.

17 BY MR. PLACITELLA:

18 Q. Do you know from looking at this whether
19 it would be possible to continue to mine without
20 encountering asbestos in the EMTAL mine?

21 MR. FARRELL: Objection to form,
22 foundation, beyond the scope of the notice.

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1 THE WITNESS: I don't know, but this was
2 just one of hundreds of pieces of data that -- that
3 were being generated that -- that you received. So,
4 there was a lot more information than just this
5 available.

6 BY MR. PLACITELLA:

7 Q. What else do you have allegedly related
8 to the test results from the study that was done by
9 Dr. Hemstock and Dr. Gale and Dr. Triglia of the mine
10 in 1979? What do you have?

11 MR. FARRELL: Objection to form,
12 foundation.

13 Are you really asking these questions,
14 Mr. Placitella? You now --

15 MR. PLACITELLA: I am --

16 MR. FARRELL: Excuse me. You are now
17 making use of and improperly using information from a
18 sealed proceeding.

19 MR. PLACITELLA: No, I am not.

20 MR. FARRELL: You are, sir.

21 MR. PLACITELLA: No, I am not.

22 MR. FARRELL: You are, sir.

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1 MR. PLACITELLA: No, I am not.

2 THE WITNESS: I'm not saying there is
3 other information in this. I'm just saying this is
4 one of hundreds of documents that -- that looked at
5 EMTAL and the products and the airborne -- and the
6 airborne particulates in that mine.

7 So, this would be used among hundreds of
8 other documents and studies or dozens of other
9 studies to determine whether or not that should be
10 mined.

11 BY MR. PLACITELLA:

12 Q. All I want to know is: Do you have any
13 other reports or data that pertain to the study done
14 by Dr. Hemstock and Mr. Gale of the mine in 1979?

15 MR. FARRELL: Objection to form,
16 foundation, asked and answered multiple times,
17 harassing the witness.

18 THE WITNESS: Not that I know of.

19 MR. PLACITELLA: Thank you very much.

20 MR. FARRELL: Are you finished?

21 MR. PLACITELLA: I am, unless you're
22 going to ask more questions.

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1 MR. FARRELL: No.

2 Are you finished?

3 MR. PLACITELLA: I don't know if anybody
4 on the phone has any questions.

5 MR. FARRELL: Hearing nothing, I would
6 say --

7 MR. PLACITELLA: Does anybody on the
8 phone have any questions?

9 MR. ANDRIS: James Andris. No questions.

10 MR. ARROYO: This is Elias Arroyo. No
11 questions.

12 THE VIDEOGRAPHER: The time is now
13 4:11 p.m. This completes the deposition of Daniel
14 Steinmetz.

15 We are going off the record.

16 (Whereupon, at 4:11 p.m., the deposition
17 of DANIEL STEINMETZ concluded.)
18
19
20
21
22

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CERTIFICATE OF NOTARY PUBLIC

I, Carol J. Robinson, RPR the officer
before whom the foregoing cause was taken, do hereby
certify that the witness whose testimony appears in
the foregoing transcript was taken by me in shorthand
at the time mentioned in the caption hereof and
thereafter transcribed by me; that said transcript is
a record of the testimony given by said witness to
the best of my ability; that I am neither counsel
for, related to, nor employed by any parties to the
action; and further, that I am not a relative or
employee of any counsel or attorney employed by the
parties hereto, nor financially or otherwise
interested in the outcome of this action.

CAROL J. ROBINSON

Notary Public in and for the
District of Columbia

My commission expires:
March 1, 2020

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ACKNOWLEDGMENT OF DEPONENT

I, DANIEL STEINMETZ, do hereby certify
that I have read the foregoing pages ____ to ____ and
that the same is a correct transcription of the
answers given by me to the questions therein
propounded, except for the corrections or changes in
form or substance, if any, noted in the attached
Errata Sheet.

DATE

SIGNATURE

Subscribed and sworn to before
me this 26th day of July 2017

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